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ENVIRONMENTAL ASSESSMENT AND ABORIGINAL CLAIMS: IMPLEMENTATION OF THE INUVIALUIT FINAL AGREEMENT

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ADDENDUM

This publication is one of three published from the Graduate Student Research Contract Program of the Canadian Environmental Assessment Research Council (CEARC). Field research was undertaken in 1986-87 and the original report was completed in 1987.

Since then Maureen has furthered her studies at the University of Waterloo in the area of sustainable development and hinterland communities. Her current research examines efforts by a Northern Ontario community to address resource and economic decline through co-management arrangements with the provincial government. Maureen has accepted an appointment in the Geography Department of the University of British Columbia commencing January 1, 1991.

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A Background Paper Prepared for the
Canadian Environmental Assessment
Research Council

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ABSTRACT

This essay explores new environmental impact screening procedures as they apply in the Northwest Territories. The research suggests that the goals of environmental protection are shared between environmental activists and native rights advocates. However, an historical review of government development policy in the North and an exploration of aboriginal claims reveals that native people have historically been excluded from direct involvement in the decision-making procedures that involve allocation of property, resource use, and land management. Native people consider their participation in land and resource-use management decisions as a cornerstone to elements of their rights.

The study examines new institutional provisions for a joint environmental impact screening and review process established by comprehensive claims agreement between the Government of Canada and the Inuvialuit of the Western Arctic. The provisions of the Inuvialuit Final Agreement have modified the framework for environmental assessment to include a statutory provision for screening of project proposals on environmental grounds. This requirements serves to strengthen the framework and provide for more broadly-based input at the local level at an early stage of project application. The prospects for and problems encountered during the initial stages of implementation of the screening provisions were explored through in-depth interviews with process participants. The results indicate that initial support for the process is positive though cautious. The procedures will continue to evolve as participants gain experience and new agreements with other native groups are signed. Flexible institutional response will be required from practitioners of environmental impact assessment to ensure timely and co-ordinated implementation.

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The on-going acceptance and support of family and friends gave me the impetus to complete this project. Their reassurance and encouragement is a constant source of motivation.

... it has long been time to challenge the silly alternatives of separation and assimilation...It need not, indeed it must not, be a matter of chossing between being drowned or being marooned on an island, but a matter of choosing which of several ways to take advantage of living by the shore, with access to both the land and to the sea.
(Chamberlin 1981:180)

ABBREVIATIONS

AWAC	Arctic Waters Advisory Committee
COGLA	Canada Oil and Gas Lands Administration
DIAND	Department of Indian Affairs and Northern Development
EARP	Environmental Assessment and Review Process
FEARO	Federal Environmental Assessment Review Office
F-TLAC	Federal-Territorial Land Advisory Committee
GNWT	Government of the Northwest Territories
HTC	Hunters and Trappers Committee
IEE	Initial Environmental Evaluation
IERC	Interagency Environmental Review Committee
IFA	Inuvialuit Final Agreement
ILA	Inuvialuit Land Administration
ILAC	Inuvialuit Land Administration Commission
ISR	Inuvialuit Settlement Region
JBNQA	James Bay and Northern Québec Agreement
LARC	Land Advisory Review Committee
LUAC	Land Use Advisory Committee
NAP	Northern Affairs Program
N.W.T. Bens	Northwest Territories Northwest Territories Benefits Committee
RERC	Regional Environmental Review Committee
TAC	(Northwest Territories Water Board) Technical Advisory Committee

CHAPTER 1: INTRODUCTION TO THE RELATIONSHIP BETWEEN ENVIRONMENTAL ASSESSMENT AND ABORIGINAL CLAIMS

ABORIGINAL RIGHTS AND THE ENVIRONMENTAL MOVEMENT

The environmental movement of the 1960s was characterized by widespread public concern over the adverse biophysical and socio-economic effects associated with resource development and industrialization. At this time, citizens expressed a desire to become involved in making decisions that would affect the quality of their environment. In response, governments with responsibility for land use and resource management introduced new institutions to incorporate environmental and social impacts of development into a decision-making framework for project planning. In 1973, the Government of Canada established the Environmental Assessment and Review Process (EARP). The provincial governments also became involved in environmental impact assessment by developing either legislation or policy directives to guide implementation of projects under provincial jurisdiction.

In northern Canada[2], attention to environmental issues focused on the development of non-renewable resources, particularly minerals and hydrocarbons. Native people living in these regions experienced social and cultural costs associated with resource development because of their proximity to and their continuing cultural, social, and economic attachment to the land base and renewable resource harvesting. Responsibility for land allocation and resource management was retained by the federal government. Government policy with respect to economic development in the North systematically excluded native people of that region from participating in making decisions that affected their lives. Legislation of general application and resource leasing to third parties restricted native rights and threatened continuance of traditional harvesting activities.

Application of the Environmental Assessment and Review Process in northern Canada resulted in several public reviews of projects ranging in scale from a single exploratory oil well in Lancaster Sound to the evaluation of a development concept in the Beaufort Sea. These public reviews were not only forums to raise technical issues; they became platforms from which public interest groups began to question the overall government direction of economic and social development for the North. In particular, newly formed native political organizations[3] and their advocates questioned the legitimacy of government authority to make management decisions based on assessments in regions where treaties ceding property from aboriginal inhabitants to the Government of Canada had not been signed. Because environmental assessments were not designed to address issues that arose from outstanding aboriginal claims of land ownership and management, native advocates feared that land use and resource allocation decisions resulting from these assessments would be made prior to resolution of their claims.

The goals of the environmental movement and of native advocates were to encourage sustainable development. The concept of sustainable development provides for industrial development within boundaries that will sustain renewable resources and protect the physical landscape from degradation. The environmental movement diverged from the native rights movement, however, because it sought to ensure that environmental effects of project proposals were considered within the context of an existing government framework. This framework perpetuated the exercise of exclusive government ownership of land and responsibility for its management. Native advocates wanted environmental effects to be considered within a new framework. This new framework would recognize aboriginal property interests and the rights of land ownership and management flowing from these interests. This would allow native peoples to directly influence the pace and scale of development and to obtain direct economic and social benefits of development.

In part, the goals of environmental impact assessment and native claims are the same. Both seek to ensure that industrial development is not undertaken without consideration for the biophysical and social environment. The literature on environmental impact assessment and native claims has remained substantially separate, the former found in writings of applied scientists, the latter in the writings of legal historians. Writings on native environmental assessment focus on the environmental or social effects of development on native people. In contrast, this study explains why direct native involvement in assessment is an important expression of aboriginal rights. Using a comprehensive claims agreement as a case study, this paper shows how these rights have been implemented in their early stages. Environmental impact assessment has been institutionalized by those with authority for land and resource management and has become an important instrument for planning and modifying development with consideration for environmental quality. Native people seek to share in meeting these objectives because of their fundamental interest in northern land use. Thus the goals of environmental impact

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[1] In this essay, the word "native" will be used to refer to the descendants of the aboriginal inhabitants of Canada. The terms aboriginal, indigenous, and native will be used interchangeably.

[2] North or northern Canada will define the region north of the 60th parallel. This is the political boundary at which the federal government assumes jurisdiction and the point at which comments that follow regarding federal policy and programs particularly apply.

[3] The Committee for Original Peoples' Entitlement (COPE) was formed to negotiate native claims on behalf of the Inuvialuit of the Western Arctic. COPE did not participate in the Beaufort Sea environmental impact assessment, perhaps because it did not want to prejudice its position with respect to the imminent resolution of its claim. In its absence, the Beaufort Sea Alliance, composed of several interest groups, advocated for settlement of native claims before development be allowed to proceed.

assessment and native claims converge when the institutional arrangements allow for joint management structures between government and native organizations.

Contemporary native claims agreements[4] seek to establish new institutions that reflect northern native values and aspirations. Through resolution of claims, native people want to become meaningful participants in both traditional and wage economies and to have influence in decisions which affect their livelihoods (Department of Indian Affairs and Northern Development 1985b; Ittinuar 1985). These agreements are intended to enable aboriginal peoples and the federal government to share both the responsibility for the management of land and resources and the benefits from their use. New arrangements provided by a comprehensive claims agreement for environmental impact assessment will add a new layer to the already-complex regulatory and institutional framework within which resource development takes place. New provisions also have the potential for altering the environmental impact assessment framework to give more influence to those people directly affected by project proposals. The extent to which an agreement can provide native people with greater influence in decisions regarding land and resource allocation is still undetermined and provides much scope for investigation.

THE INUVIALUIT FINAL AGREEMENT AS A CASE STUDY OF THE IMPLEMENTATION OF A NATIVE CLAIMS AGREEMENT

The Inuvialuit Final Agreement (IFA)[5] is the first modern agreement to be established in the territories. It was validated by an Act of Parliament passed in June 1984 and proclaimed on July 25, 1984. The Agreement has provided the 2,500 Inuvialuit of the Western Arctic with rights of land ownership and management over 91,000 square kilometres of land. Figure 1 shows the size of the settlement region in relation to other native claims areas in Canada.

The Inuvialuit Final Agreement illustrates the degree of influence native people might obtain through negotiated resolution of native claims and has potential to be used as a model for future claims agreements. It establishes new procedures for environmental impact screening and review for projects affecting Inuvialuit lands. This study focuses on new environmental screening procedures because important decisions made at the screening stage have historically been without broadly-based public input and because the experience with the Inuvialuit procedures has been mainly restricted to the screening phase.

To date, there has been no attempt to compare the procedures established under this Agreement with those established by the James Bay and Northern Québec Agreement (JBNQA)[6], which might have been the subject for a similar review. While it is recognized that more research is needed in comparative analysis of the approaches implemented in each Agreement, it is beyond the scope of this paper to attempt such an analysis.

In contrast to the federal Environmental Assessment Review Process, the Agreement places a legal obligation on the federal and territorial governments to ensure that development proposals are subject to environmental impact screening and review before development may proceed. Compliance with this obligation, therefore, has the potential to operationalize native influence in the decision-making process at the initial stages of project application. As participants in making recommendations for screening decisions, the Inuvialuit can play an important role at the initial proposal stage. The extent to which native involvement is influential in decision-making will depend on the strength of the legislative mandate, the ease of application of the new provisions, and the moral and logistical support it maintains for implementation. By examining the new legislative and institutional provisions for environmental screening, this study analyzes the potential for greater native influence in environmental assessment on lands now designated to the Inuvialuit.

RESEARCH METHOD

Empirical research for this study was undertaken using a qualitative analytical framework. Research results are based on the interpretation of personal in-depth interviews and primary documentation obtained from government, industry, and the Inuvialuit. Personal interviews were held with key informants in government, industry, and Inuvialuit agencies in Ottawa, Calgary, and the four northern communities of Yellowknife, Inuvik, Aklavik, and Tuktoyaktuk.

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[4] The use of the term *native claims agreements* or *comprehensive claims agreements* as opposed to land claims settlements is deliberate. The terminology is consistent with current interpretations which suggest that settlement of land is only one part of a larger social contract being negotiated between native people and the federal government (see, for example, Dacks 1985; Ittinuar 1985; Lysyk 1974; McNeil 1983; Sanders 1983). This terminology was also adopted by the Task Force to Review Comprehensive Claims Policy. The final report used the term *agreements* over settlements to emphasize its recommendation that agreements be made flexible rather than final and that they affirm and acknowledge aboriginal rights (see Department of Indian Affairs and Northern Development 1985). This recommendation has since been adopted by the federal government (see Hatter 1987).

[5] Inuvialuit is the term to describe the Inuit (northern native) people who live in the Western Arctic. Under the Inuvialuit Final Agreement, Inuvialuit is defined as those people known as Inuvialuit, Inuit, or Eskimo, who are beneficiaries of the Agreement. The Western Arctic Region means that portion of the Inuvialuit Settlement Region other than the Yukon Territory (see Department of Indian Affairs and Northern Development 1984c). Separate structures have been created to regulate development in the Yukon Territory. This essay focuses only on those structures created that pertain to the Northwest Territories and its offshore region.

[6] The James Bay and Northern Québec Agreement (JBNQA) was signed on November 11, 1975 between the Grand Council of the Crees, the James Bay Crees and their bands, the Northern Québec Inuit Association, the Inuit of Québec, the Inuit of Port Burwell, and the governments of Canada and Québec, the James Bay Energy Corporation and the James Bay Development Corporation and Hydro Québec. It was undertaken to facilitate development of the James Bay Hydro Electric Project. The agreement provides native peoples with a measure of legal protection for land and wildlife resources and provides economic and social compensation for losses incurred by the project. While this settlement contains comprehensive terms and conditions, legal interpretation does not consider it an agreement established under the 1973 federal comprehensive claims policy (see Bankes 1983). Nonetheless, it is comprehensive in scope and contains measures to extinguish aboriginal rights and to provide finality, both of which are distinctive characteristics of the 1973 policy.

The study period is from mid-April 1986 to mid-November, 1986. The Screening Committee was established in April and met for the first time on April 23 to assess its first proposal. By mid-November, the results of four proposals had been reported. Each recommendation of the Committee demonstrated a different type of exercise in its authority. Thus the empirical work traces the pathways of these proposals to draw preliminary conclusions about the initial powers and problems encountered with the screening procedures.

Those who were interviewed were selected through development of a network of key informants in government, industry[7], and Inuvialuit agencies, on the basis of their availability, familiarity with northern environmental assessment procedures, and experience with the Inuvialuit Final Agreement. In all, 43 interviewees were interviewed in the locations of their work. Of this total, 13 people responded to a semi-structured interview schedule, while 30 people were interviewed using an unstructured format. Additional observations were recorded during telephone communication with five interviewees. Appendix A lists the people who were involved in providing information for the study.

The interview format was based on a set of questions, provided in Appendix B. For consistency, all 13 respondants were asked the same questions. For clarification and more detailed information based on personal expertise, a second set of questions was inserted, tailored to each interest group. The remaining 30 respondents were asked questions from the interview schedule which pertained to their particular expertise, followed by more in-depth questioning on particular issues. The telephone interviews were general in nature but served to confirm the more specific observations provided by the personal interviews or other documentation. The data derived from interviews were supplemented with information from primary documents and evaluated using qualitative reduction methods.

Reliability is considered problematic when interpretive aspects such as coding of interviews are left to the individual investigator (Payne 1975). The author attempted to retain consistency in interpretation in the following ways. First, field note summaries were developed from each set of interview notes which summarized basic points made according to broad topics and respondent name. Second, observations made by those being interviewed were coded into thematic matrices which listed the observations, broken down by name of organization. To ensure accuracy to this point, exact quotations, or interview notes or field note summaries and the names of respondents were retained in the matrices. Third, where points in the matrices seemed unclear in meaning or where information seemed contrary, initial interview notes or official government documents such as the Final Agreement, were consulted.

The matrices provided a useful means of organizing the data for interpretation. Table 1 shows how the matrices were organized.

Because of the volume of information generated, however, the matrices did not lend themselves to data display. Further simplification to display the data would have eliminated much of the qualitative aspects. As a result, the information has been presented in more descriptive form, using tables and figures as necessary.

The evaluation is limited in at least three ways. First, the signing of the Agreement is a recent phenomenon and its implementation has been slow. The Screening Committee and Review Board were established in April 1986 so that experience with the procedures is still very new. As a result, observations made are preliminary and take into account current efforts of the participants who are continuing to improve the implementation procedures. The second major limitation of the study was the researcher's limited experience in the northern setting. All interviews were conducted by a southern urban-based white Euro-Canadian whose experiences may have lent some hidden bias in the gathering of data and interpretation of the results. To overcome this potential for bias, a variety of information sources were used. Finally, because of the potential for bias and the sampling method, the results may not be replicable.

Table 1
Sample Matric for Analysis of Qualitative Data

Theme	Final Agreement	Federal Gov't	Territorial Gov't	Screening Committee	Industry	Other
Referral						
1. geog'ic scope	S. 2,11,13	"only 7.1a lands in the Settlement Region"	"7.1a and 7.1b lands in the Settlement Region"	"includes offshore if for compensation"	"not sure what projects are subject"	"every case screened sets a precedent"

[7] For the purposes of this paper, industry is limited to the oil and gas industry. Participants in the industry who were contacted in person were employees of Dome Petroleum, Gulf Canada and Esso Resources Canada, the primary operators in the Beaufort Sea region. These companies have had the greatest experience with environmental assessment procedures in that region and with the Inuvialuit. Telephone contact was also made with the manager, Environment and Socio-economic Development, Canadian Petroleum Association and with a representative from Petro-Canada.

ORGANIZATION OF THE STUDY

This study examines the relationship between the new institutional arrangements for environmental assessment and greater Inuvialuit influence in land use decisions. An historical overview of development policy, environmental regulation, and response to native claims in the Northwest Territories demonstrates that interest in land by native organizations and the federal government has been set within conflicting perceptions and values regarding the goals and means of achieving economic development. This review is followed with a discussion of the institutional framework for environmental assessment with reference to characteristics important for northern Canada. The institutional arrangements for environmental screening in the North are compared; first outlining the procedures established under the Federal Environmental Assessment and Review Process (EARP), then the provisions under the Inuvialuit Final Agreement. Comparative evaluation of these provisions is undertaken with reference to the legislative mandate and the ease of application of the procedures. Final comments about the procedures in the context of the overall framework for implementation are provided and recommendations made for improving the procedures.

This approach is intended to improve the understanding of northern environmental assessment procedures as new arrangements are developed which increase their complexity. Using the new procedures for environmental screening as an example, this study attempts to clarify the extent to which practical arrangements have been developed to provide the Inuvialuit with greater influence in land management decisions. This evaluation may contribute to a greater understanding of changes in the institutional framework for environmental impact assessment in the North. Ideally, it may also provide some insight about the extent to which the Inuvialuit Final Agreement might be used as a model for other settlements in Canada.

CHAPTER 2: CHANGING GOVERNMENT POLICY IN THE NORTH SINCE WORLD WAR II

THE CULTURAL CONTEXT OF NORTHERN ISSUES

A review of government policy in the North since World War II, establishes two major factors important for the implementation of joint institutions for environmental impact assessment with native people. Primarily, it demonstrates that native involvement in environmental impact assessment is imperative for two major reasons. First, the land base has continued to have a social and cultural significance that has not been well understood by proponents of resource development. Native people living in northern Canada have experienced the social costs associated with resource development because of their physical proximity to non-renewable resources and their particular relationship with the land. Second, native claims go beyond claims of a local and interested population who seek involvement based on principles of participatory democracy. Native involvement in environmental impact assessment is part of a larger movement which seeks this responsibility as a right flowing from recognition of native land ownership.

Secondarily, this review illustrates that government policies for the North have tended to overlook native aspirations and, instead, have established an institutional framework which responds to interests generated outside the North. As a result, northern native people have been excluded from substantive involvement in decisions which directly influence their livelihoods. Because of their previous lack of involvement in contemporary decision-making institutions, native people lack cultural familiarity with provisions such as those for environmental impact assessment outlined in the Inuvialuit Final Agreement. This unfamiliarity could have important implications for the implementation of the Agreement, which is based on a model derived from southern institutions.

Native claims in the North are tied to a particular set of economic and social circumstances that developed since contact with Euro-Canadian society. A survey of the literature on northern economic development since World War II, native law and environmental impact assessment reveals differences in cultural perceptions regarding development alternatives and resource management strategies. An examination of these perceptions provides the necessary background for understanding how native claims came to be linked to issues of land tenure and responsibilities for environmental assessment.

Early writings about northern development interpreted the economic inequality between north and south solely as a regional problem, attributing cultural dominance to location. The most common tool for explaining this inequality was the core-periphery or metropolis-hinterland relationship (Penrose 1982). Economic development was constrained solely by lack of strong transportation and communications links to the south, lack of educated work force, harsh climate, and a low and highly dispersed population. According to this model, the solution to the problem of underdevelopment is modernization.

For the purpose of this essay, modernization refers to a process whereby a relatively closed society becomes transformed, reducing its dependence on traditional ways, through contacts with dominant Western models (Brookfield 1975).

Modernization of the northern economy was set within notions of production that assumed that traditional economic activities would give way to full employment of a wage work force. Government and industry attempted to re-orient the economy of the North from one based on subsistence food generation to one with a deliberate focus on activities that generate a surplus to obtain products in an industrial system (Stabler 1978). Local wage employment in the non-renewable resource sector was viewed as beneficial because it was expected to provide the basis for a rising standard of living and greater economic opportunity for northern Canadians (for detailed discussion, see Keith and Fischer 1977; Rea 1968; Robertson 1955b; Usher 1976; Watkins 1977). Table 2 below shows that income from wages during 1969 to 1970 was the dominant form of income generated in three communities along the Mackenzie Delta.

The modern sector, as represented by the sector providing income in wages, was viewed as an enclave where development takes place. The logical solution to encourage modernization has been to move people from the traditional to the modern sector and to provide an increased standard of living and better quality of life for northerners, particularly native residents.

Critics of this view claim that the presence of the modern sector reduces access to land and wildlife necessary to sustain the native economy and, simultaneously, excludes native people from new economic opportunities (Watkins 1977b). Even in 1981, only 48% of Inuit population 15 years of age and over participated in the labour force at all. Of these, 16% were unemployed compared to 7% in the general population of Canada. Thirteen per cent of the Inuit population relied on government transfer payments as their major source of income, compared to 6% for the rest of Canada (Robitaille and Choinière 1985). Statistics such as these demonstrate that cultural and economic barriers between the sectors prevent native people from becoming equal participants in the wage work force (Asch 1984; Cunningham 1984; Dacks 1981; 1985; Usher 1978, 1981; Whittington 1985). The consequence is an increased dependence by native people upon welfare support (Cunningham 1984). This theme is consistent with other works that explain native-white relations outside of the northern setting (for example, Frideres 1983; Manuel and Poslums 1974).

These writers also claim that the emphasis on measuring the bush economy by market value alone substantially reduces its scope and cultural significance (for further elaboration, see Asch 1984; Cox 1985; Dacks 1981; Goodland 1985). For example, Naysmith (1976) suggests that a common characteristic of all northern cultures has been the ability to husband

Table 2
Earned Income of Native People by Source:
Three Selected Communities in the Mackenzie Valley, 1969-1970

Community	Wages & Gross Salaries*	Self Income from Trapping**	Total Employ. Income	Trapping Earned Income	Wages % as % Earned Income	Salaries as % Earned Income
Aklavik	$ 252,400	$ 65,900	$ 800	$ 319,100	20.6	79.1
Inuvik	636,700	86,400	7,000	730,100	11.8	87.2
Tuktoyaktuk	296,600	9,500	1,100	307,200	3.1	96.5

* Income applies only to Inuit, Indians and Métis.

** Trapping income earned primarily by Indian and Inuit trappers. A small number of Metis and white trappers are included.

Source: Stabler (1978).

available resources for survival, despite low productivity of the land and the severity of the climate. In part, as a result of their total dependence upon the land for food, clothing, shelter, and energy, native people associate the wealth from the land in a broader philosophical and religious context. Maintenance of traditional land-based patterns has been considered essential to the perpetuation of many aspects of the native way of life (Goodland 1985). The procurement and distribution of country food functions as a rationale to continue the custom of traditional sharing among band members. Hunting is essential in that it provides one of the best opportunities for traditional values to be practiced within contemporary settings (Asch 1984).

According to Cox (1985), native northerners derive most of their income in the form of country provisions, rather than cash. Anything which reduces their harvest, reduces their general standard of living. Cox found that while fur sales account for only a small part of the current native domestic economy, hunting and trapping still remains of overwhelming importance in providing provisions. Using substitution methods, Table 3 suggests that the value of country foods remains high, even though the actual cash received from fur sales is insignificant.

Different interpretations of the goals of productive activity have been accompanied by different perspectives on land tenure. Previous to the presence of the federal government in northern Canada, there was no system established for marketing of property or obtaining rights of exclusive use (Naysmith 1976). In traditional aboriginal society, property rights rested with the group. In contrast to the notions based on collective ownership, Euro-Canadians brought with them the notion that real property should be held either privately or in trust by the state. In Canada, the Crown owns land and its resources and alienates it to private interests to further the collective interests of society as perceived by the state (Usher 1984). Transfer of property between owners has been institutionalized by the creation of the market, which is used to allocate both land and resources. Within a market system, lack of ownership constitutes a failure; the responsibility for allocation and management of resources cannot be assigned to one owner or set of owners (Hardin 1968).

Introduction of land alienation in northern Canada failed to allocate land strictly for the purpose of native harvesting activities because traditional native dependence on extensive tracts of land for wildlife harvesting was not considered a legitimate productive activity. Instead, land leases granted by the Crown to outside interest groups conferred distinct rights to third parties for industrial development. Culturally and economically excluded from the market system, native people have not historically enjoyed legal recognition of the their interest in land and the resources upon which they rely.

Table 3
Mixed Economy of the Natives of the
Mackenzie Valley, 1970

Income Source	Value in $	Per cent of Income
Trapping (fur sales)	314,095	3
Wages & self-employment	2,465,382	26
Other income	892,075	9
Country foods (substitution value)	5,881,200	62
TOTAL	9,552,752	100

Source: Cox (1985:398)

Instead, rights accorded to aboriginal peoples have been loosely interpreted as usufructuary rights. This term has been applied to mean that the holder is limited to enjoying the fruits of the land without actually obtaining outright title to property (Gagne 1982/83). Without property title, native people have found that federal legislation to limit hunting and fishing rights has been applied to native usufructuary rights. While provincial laws and territorial ordinances cannot restrict native rights to hunt for food, federal legislation has been found to supersede subsistence rights accorded to native people under the *Indian Act* (McNeil 1983). Several cases have been documented where federal acts such as the *Migratory Birds Convention Act* and the *Fisheries Act* have been held to apply over native hunting, fishing, and trapping rights (for greater discussion, see Cumming and Aalto 1974; Cumming and Mickenberg 1972; Lester 1982; Sanders 1974, 1983).

Conflicts over land use highlighted the differences between how the two societies were structured and, therefore, went beyond questions of land allocation to include considerations of cultural identity and preservation (Ittinuar 1985; Nowicki 1985). These disputes often raised broader social and economic questions about the potential dichotomy between the perceived resource needs of an energy-hungry industrialized society in southern Canada versus the conservationist, communal Indian and Inuit societies in the North (Morse 1985). Notwithstanding these differences, the federal government developed an increasingly complex bureaucratic system in the North to provide services and encourage industrial development. Before discussing government policy in the North, an overview of current demographic characteristics may help to place the region in relation to the rest of Canada.

DEMOGRAPHIC CHARACTERISTICS OF THE REGION

A regional overview of the Northwest Territories reveals that its demographic characteristics have placed many constraints on the prospects for modernization. A glance at Figure 1 indicates that the territories are very large, approximately one third the size of the rest of Canada. The population of the Northwest Territories is highly dispersed, with 20 main communities ranging in population from approximately 9,500 at Yellowknife to 605 at Fort Providence in 1981 (Stabler 1985). In total, native people compose approximately 59% of the population in the Northwest Territories. Table 4 shows the proportion of Inuit in the six communities affected by the Agreement in relation to the rest of the Northwest Territories and Canada.

Since 1931, the Inuit population of Canada has quadrupled. Yet, mortality rates continue to be well above the Canadian average. Infant mortality is five times higher than that of the general population of Canada and life expectancy at birth is ten to fifteen years below the Canadian average. Accidents are the major cause of death among the Inuit (Robitaille and Choinière 1985). Inuit of Canada also have lower levels of education than the Canadian average. In 1981, 39% of Inuit had completed grade nine compared to 80% of the general population (Robitaille and Choinière 1985). Inuit participation in the labour force has also been correspondingly lower than for other Canadians. Table 5 summarizes these demographic characteristics by community for the Northwest Territories.

Table 4
Inuit and General Populations in the Northern Communities+ and the Rest of Canada

Community or Region	Inuit Population	1981 General Population	Percentage of Inuit
Aklavik●	370	705	52.5%
Holman Island	275	300	90.7
Inuvik	640	3,125	20.5
Paulatuk	165	175	94.3
Sachs Harbour	145	160	90.6
Tuktoyaktuk	680	770	88.3
N.W.T. Total	15,910	45,540	34.9
Northern Canada*	22,075	141,015	15.7
Southern Canada**	3,315	23,943,480	0.0
Total Canada	25,390	24,083,495	0.1

+ These six communities were selected because they are the communities affected by the Inuvialuit Final Agreement.

● The relatively small percentage of Inuvialuit is due to a large percentage of Dene and Métis.

* Northern Canada refers to that region which includes Labrador, Northern Québec, Northwest Territories and the Yukon.

** Southern Canada refers to that region which includes all the provinces of Canada, except for Labrador and Northern Québec.

Source: Robitaille and Choinière, 1985

ESTABLISHING A GOVERNMENT PRESENCE

Prior to World War II, the federal government allowed economic activity brought by the fur traders and the leadership of the missionaries to set the pattern of native life (Rea 1968). After World War II, however, the government became more aware of the inadequacy of the fur trade as a stable source of income and of the missions to provide adequate education, medical care, and welfare services. Long-range prospects for improving conditions for native people became linked with a general economic development policy for the North (Robertson 1955b).

The movement of Inuit people from traditional community camps to larger, organized settlements was encouraged through direct government initiatives so that educational and other social services could be more readily provided (Rea 1968). These initiatives are exemplified by the development of the community of Coppermine. In 1946, health and education in the territories became the responsibility of the federal government. By 1948, a nursing station was established at Coppermine; a two-room school was built in 1950 (Usher 1965). Construction of the Distant Early Warning (DEW) line began in 1955, bringing many more whites into direct contact

Source: Canada. Federal Environmental Assessment Review Office, 1984

Figure 1. Place Names in the Yukon and Northwest Territories

Table 5
Selected Characteristics of the Inuit Population
Canada and Communities, 1981

Community	A	B	C	D	E	F	G	H
Aklavik	2.6	100.0	40.8	50.0	33.3	6,763	33.3	0.9
Baker Lake	2.9	73.5	39.4	50.5	22.0	6,984	33.3	1.1
Cambridge Bay	2.7	89.3	43.8	57.5	14.3	7,451	12.5	1.1
Cape Dorset	3.2	50.0	30.5	50.6	22.0	7,496	16.0	1.4
Coppermine	2.6	86.6	29.0	31.5	27.6	7,728	6.7	1.2
Eskimo Point	3.4	63.9	36.4	38.8	10.5	6,286	5.7	1.2
Frobisher Bay (Iqaluit)	3.0	73.6	33.3	58.2	15.6	9,057	19.2	1.2
Igloolik	3.6	47.6	28.4	54.4	35.1	7,432	18.2	1.4
Inuvik	2.7	100.0	50.0	62.5	14.0	11,157	8.7	1.1
Pangnirtung	3.4	53.8	33.0	52.9	23.9	7,011	28.6	1.8
Pond Inlet	2.9	52.3	23.9	47.8	12.5	9,437	13.6	1.4
Rankin Inlet	3.2	74.1	44.2	54.7	15.4	8,406	31.0	1.2
Tuktoyaktuk	3.1	99.3	40.7	38.4	18.2	8,251	50.0	1.3
Canada	2.7	65.6	39.5	48.2	15.2	8,272	18.2	1.2

A. Average number of children per family

B. Percent of population knowing English

C. Percent of population 15 years of age and over having more than grade eight

D. Participation rate of the population 15 years of age and over

E. Unemployment rate of the population 15 years of age and over

F. Average income of the population 15 years of age and over with income

G. Per cent of dwellings requiring major repairs

H. Average number of persons per room

Source: Robitaille and Choinière (1985)

with the remote communities, especially of the eastern Arctic. By 1959, the Coppermine-Holman region became a separate administrative unit (Usher 1965).

The desire to build model communities to provide modern services in the North became a justification to relocate native people (Robertson 1955a). Decisions regarding the locations of communities for native people were based on engineering requirements for construction of new facilities rather than requirements of native renewable resource economies. Two examples are the establishment of Edzo, which was built to replace the community at Fort Rae (Gamble 1986) and Inuvik, which was designed to be a government center and replace the town site of Aklavik (Wonders and Brown 1984). These communities were built without native agreement that they were necessary. After the towns were built, government was unsuccessful in relocating a substantial proportion of native people from their initial locations and was forced to find ways of providing services to the original communities.

Government also encouraged economic development of the North in response to threats to its sovereignty over the Arctic Islands and the Northwest Passage by the United States (Dosman 1975; Ørvik, 1983). The most open challenge to Canadian sovereignty in the North occurred in 1968-70. Following the Alaska oil strike in 1968, American companies and individuals became involved in resource exploration in Canadian waters without the restriction of substantial regulation. Dosman (1975:42) states that exploratory and development leases were granted to Americans on 50.7% of total oil and gas producing areas on land and in water. In the following year, the test of the ice-breaking tanker, S.S. *Manhattan*, through the Northwest Passage was carried out by the American government without the consent of the government of Canada (Dosman 1975). New legislation passed by the Canadian government in 1970, such as the *Arctic Waters Pollution Prevention Act*, was as much an indirect claim over the Arctic waters as an Act to protect the northern environment (Dosman 1975).

Increased economic activity through the extractive industry was viewed as a positive measure to reinforce Canada's claim to sovereignty over its Arctic islands. It served as a less expensive method of demonstrating effective occupation than increasing the number of military establishments in the islands (Dacks 1981). In addition, this activity was seen to bring economic benefits to Canada at large, the North in particular. It also helped to fulfil the "need to know" policy associated with security of supply of energy resources for all of Canada (Department of Energy, Mines and Resources 1980).[8]

These activities indicate that demands for land use reflected separate values between non-native development proponents and native inhabitants of the North. Government priorities were characterized by the lack of an overall policy framework and thus became fragmented among competing outside interests. The following section illustrates that government institutions to manage land use and undertake environmental assessment were initially created without reference to native claims for direct participation in the decision-making process. The federal government now recognizes these claims and has become committed to negotiating their resolution.

ESTABLISHING GOVERNMENT POLICY

While nearly every federal government department has regionally-delegated responsibilities relating to Canada's North, the Department of Indian Affairs and Northern Development (DIAND) was initially given the responsibility for administering northern federal programs in 1953. During the 1950s and 1960s, the DIAND was given a province-like administrative role over the territories according to the provisions of the *Yukon Act*, the *Northwest Territories Act*, and other federal statutes. The territorial governments have more recently been charged with some responsibility for renewable resource management, although they still have no authority over the allocation of land except in the communities or as delegated by federal authority (Beauchamp 1976). The DIAND was made simultaneously responsible for promoting Indian and Inuit interests and managing land in the northern territories in 1966 (Department of Indian Affairs and Northern Development 1985).

Despite this two part mandate, these two functions have been undertaken as if they were largely separate from one another. Land use permits have been provided by DIAND in the absence of resolution of native claims based on aboriginal title. The *Territorial Lands Act*, administered by DIAND, is the major piece of enabling legislation which allocates the surface and subsurface rights to third parties north of the 60th parallel. Sections 2 and 3 of the *Territorial Lands Act* allow the Minister of Indian Affairs and Northern Development to sell, lease, or dispose of territorial lands that are under his control, management, and administration. Section 8 provides that the Governor-in-Council may make regulations for the leasing of mining rights in, under or upon territorial land with compensation (which may include cash) to the holders of the surface rights. These provisions created third-party rights and increased the possibility that mining and petroleum legislation of general application would be interpreted by the courts as extinguishing or limiting aboriginal title in the North and thereby reducing the possibilities for resolution of native claims (Bankes 1983).

In 1972, Ottawa's goals for northern Canada were made public in a statement, *Northern Canada in the Seventies*. The first three of the seven goals of this statement are the provision of a higher standard of living according to the aspirations of the northern residents, maintenance and enhancement of the northern environment, and encouragement of viable economic development. While native aspirations and environmental protection were placed at the top of the priority list, in practice, planning for non-renewable resource development was the paramount objective. For example, Dosman (1975) points out that the Northern Pipeline Guidelines of August 1970 were drawn up before and entirely without reference to the on-going discussions surrounding the northern development policy. In December 1972, Ottawa granted approval-in-

[8] In response to the petroleum supply shortfalls of 1973 and 1978-79, the federal government provided a rationale for the National Energy Program, introduced in 1980. It provided incentives for oil and gas exploration throughout Canada, particularly in the offshore regions because it expressed the desire or need to know the extent of Canadian reserves.

[9] The responsibility for native affairs was formerly held by the Department of Citizenship and Immigration.

principle for offshore drilling in the Beaufort Sea under the Territorial Land Use Regulations without any evaluation of the possible environmental hazards and social impacts of offshore drilling. Large-scale development projects were encouraged through subsidization of private enterprise through incentive grants and tax credits for mineral and petroleum exploration and development (see, for example, Department of Energy, Mines and Resources 1980).

In recent years, greater consideration of the environmental and social impacts associated with resource development resulted in new institutional arrangements to regulate the pace and scale of industry activities. Amendments to federal government acts were implemented to provide for greater public comment on environmental and social concerns (for example, amendments to the *Territorial Lands Act*, 1971; *Northern Inland Waters Act*, 1971). In addition, the Environmental Assessment Review Process (EARP) was established in 1973 to review environmental, including social, impacts associated with significant developments occurring on federal lands or with federal sponsorship.

Since 1970, a Cabinet directive, administered by different government departments, has been used to establish public reviews of the economic, social,and environmental effects of proposed projects in the northern territories.[10] Reed (1984) identified six public reviews of the natural gas pipeline proposals in the Mackenzie Valley and the Yukon territories alone. EARP has initiated a variety of public reviews ranging in scale from a single exploratory oil well in Lancaster Sound to the evaluation of a development concept in the Beaufort Sea. These reviews have resulted in large expenditures of time and financial resources for all concerned; native people, other public intervenors, governments and industry.

Native people became increasingly dissatisfied with these review processes because they feared that decisions based on the reviews would reduce their opportunities to resolve outstanding claims. They called for the creation of new institutions in which they would share in the decision-making process on lands which they traditionally used and occupied.

Since 1973, the federal government has recognized native interest in land and has expressed its willingness to negotiate settlements where occupancy can be established and has not previously been extinguished by treaty or superseded by law (Department of Indian Affairs and Northern Development 1978). Since government announcement of this policy, the Inuvialuit Final Agreement is the only settlement which has been achieved in the northern territories. An explanation of the claims process, which follows, provides the necessary background for interpreting the provisions which have been granted under the Inuvialuit Final Agreement.

EXPLANATION OF THE CLAIMS PROCESS

Comprehensive claims based on aboriginal title[11] reflect long-standing grievances from native organizations that have not entered into a treaty relationship with the Crown. These claims relate to the loss of traditional use and occupancy of lands in certain parts of Canada where Indian title was never extinguished or superseded by law. Aboriginal title to land in Canada has been recognized within the realm of common law by virtue of aboriginal occupation since time immemorial (for further discussion see Berger 1983; Cumming and Mickenberg 1972; Gagne 1982/83; Lester 1981).

The legal basis of the Inuit claims in the Northwest Territories is that their traditional use of lands and waters, constitutes a right of property under Canadian law. The Inuit Land Use and Occupancy Study (Freeman 1976) provides the extensive factual data to support the legal argument of the Inuit. The Inuit assert that their rights extend to all the renewable and non-renewable resources. They argue that the territory that belongs to them by reference to their own customary system of tenure also belongs to them under Canadian law. The argument follows that the federal government has no legal right to alienate lands where the Inuit have property rights, without first obtaining their consent, or alternatively, following expropriation procedures under Parliamentary authority, that require fair compensation (Cumming 1985).

This legal theory has never been fully tested by the courts. Federally legislated limitations on hunting and fishing rights contained in treaties have been upheld by the Canadian courts.[12] Legal interpretation for regions where no treaties have been signed has been indecisive.[13] While there is

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[10] The *Northern Inland Waters Act* is administered by a Territorial Water Board, which makes recommendations based on its inquiry to the Minister of DIAND. All water-use licence applications, amendments or renewals require hearings under Section 15 (2) of this Act. The *Territorial Lands Act* is administered by the DIAND. Under Section 19 (h) of this Act, Cabinet may appoint a person(s) to conduct an inquiry into the specific land use proposals and to advise the Minister of DIAND as to public opinion regarding the acceptability of the proposal and about specific terms and conditions attached to land use permits. The Mackenzie Valley Pipeline Inquiry was conducted under the authority of this Act. The *National Energy Board Act* gives the National Energy Board powers to conduct public inquiries, the results of which are reported to the Minister of Energy, Mines and Resources. The Mackenzie Valley-Yukon Pipeline Hearing and the Arctic Pilot Project are examples of hearings held under this Act. The *Inquiries Act* may be used to investigate any matter connected with the "good government of Canada" (Section 2). It was used to establish the Alaska Highway Pipeline Inquiry. In addition, the *Northern Pipeline Act* was used by the Northern Pipeline Agency to provide for public hearings on the terms and conditions of the Alaska Highway pipeline. Finally, the EARP, established by Cabinet directive, has provided for several hearings in the North. The Beaufort Sea Environmental Assessment, which evaluated a development concept for the region, is the most recent northern example.

[11] Also referred to as "Indian Title," "Original Title," "Native Title," or "Usufructuary Rights."

[12] Several cases have dealt with this. For example, the case, *Regina* v. *Sikyea* (1964), 46 W.W.R. 65 (N.W.T.C.A.) dealt with the question of whether the *Migratory Birds Convention Act*, a federal statute, had taken away the treaty-protected hunting rights of an Indian in the Northwest Territories. Although found to be inconsistent with the survival of Indian rights, Mr. Justice Johnson determined that traditional subsistence rights had indeed been revoked.

[13] The judges presiding in the Supreme Court decision of *Calder* v. *Attorney-General of British Columbia* (1973), 34 D.L.R. (3d) 145 (S.C.C.) were unanimous in their affirmation of aboriginal title to land at the time of colonization. They remained divided, however, over whether this title had since been extinguished by provincial authority. The final dissenting judgement was based on a technicality, not on the main issue.

The *Calder* case was decided against the Nishga in the Supreme Court of Canada because it was determined that the Nishgas should have proceeded by issuing a writ against the Province of British Columbia rather than a petition of right. Berger (1983) notes that this route was unavailable to them, however, because at the time it was necessary to have the consent of the province to bring any proceedings by way of petition of right. It is important to note that although the *Calder* case was considered a landmark decision, none of the judgements attempted to delineate the property rights which may have been attached to the concept of title which they were deciding.

substantial judicial authority recognizing aboriginal title, the nature and extent of the ensuing rights has not been fully developed. Reliance on the courts for this clarification is perceived as risky by all concerned, fraught with technical uncertainties. Litigation is costly in both time and money, with no guarantee of producing conclusive results. Both native people and government could face substantial financial and/or territorial losses as a result of a definitive ruling (Ittinuar 1985). In regions such as the Northwest Territories where treaties have not been signed, the absence of rights conferred by treaty may place the Inuit at a greater disadvantage when pursuing their claims (Lester 1982). There are at least two major grievances with respect to the present state of the law:

- lack of definition over the rights and privileges that are accorded to those holding aboriginal title to land; and
- in the absence of a satisfactory delineation of aboriginal rights, the *de facto* legal restriction of these rights as a result of resource leasing or the introduction of federal legislation of general application (Morse 1985:652).

In 1973, the federal government issued a policy statement which recognized the validity of aboriginal rights and expressed its willingness to negotiate terms and conditions based on aboriginal title where these rights have not been alienated by treaty or superseded by law (Department of Indian Affairs and Northern Development 1978). Under this policy these claims were termed comprehensive claims.[14] The 1973 policy statement initiated the claims negotiation process.[15] The objectives of resolution have since been summarized in federal documents on comprehensive claims policy as the following:

- to facilitate planning for conservation of renewable resources upon which the native traditional economy depends (Department of Indian Affairs and Northern Development 1981);
- to facilitate management of the non-renewable resource base by reducing uncertainty regarding land ownership (Department of Indian Affairs and Northern Development 1981); and
- to meet social obligations of both natives and non-natives as defined by their respective rights and responsibilities (Department of Indian Affairs and Northern Development 1978).

According to Morse (1985), the rationale for this process was threefold. First, it was designed to provide an alternative to the courts which might hear and decide upon the validity of specific or comprehensive claims. Second, the process was designed to provide a forum which would take into account the interests of non-claimant groups in the area that may be affected by a claim settlement. For example, in the case of claims arising in the provinces and territories, their government participation would be necessary because lands and resources which may form part of a settlement are under provincial jurisdiction. The last main purpose was to translate the concept of "aboriginal interest" into concrete and lasting benefits in the context of contemporary society. Such benefits can include lands; hunting, fishing, and trapping rights; resource management; financial compensation; taxation; native participation in government structures; and native administration of the implementation of the settlement itself. Resolution has sought to confirm these benefits in legislation, to give them the stability and binding force of law.

Resolution of the claim put forward by the Inuvialuit has provided them with these benefits. The following section outlines the rights of land ownership provided to the Inuvialuit from which rights and responsibilities for environmental impact assessment are derived.

THE OVERALL FRAMEWORK OF THE INUVIALUIT FINAL AGREEMENT

Explanation of the Agreement

In June of 1984, the president of the Committee for Original Peoples' Entitlement (COPE), on behalf of the Inuvialuit, signed a claims settlement agreement with the Minister of DIAND on behalf of the federal government. *The Western Arctic (Inuvialuit) Claims Settlement Act, 1984*, proclaimed in July 1984, gave the Agreement final approval and validity. In return for extinguishing all claims, rights, title, and interest in the land base and the offshore regions of the two territories, the Inuvialuit were granted title to a portion of the lands which they have traditionally used and occupied. Figure 3 illustrates the configuration of this region. The boundary line crosses both land and water. The Inuvialuit have not been granted title to any of the offshore area but retain the authority to undertake environmental screening and review of any proposals affecting waters within the boundaries.

The basic goals of the agreement are expressed in Section 1 as the following: (Department of Indian Affairs and Northern Development 1984c: 1).

1. *to preserve Inuvialuit cultural identity and values within a changing northern society;*
2. *to enable Inuvialuit to be equal and meaningful participants in the northern and national economy and society; and*
3. *to protect and preserve the Arctic wildlife, environment and biological productivity.*

To meet these objectives, new institutions have been created to manage resources within the region designated to the Inuvialuit. These institutions include several corporate struc-

[14] *Comprehensive* claims are those based on native title not covered by previous treaties or claims agreements. They involve providing a comprehensive range of benefits in exchange for recognition of aboriginal title. *Specific* claims are those from Indian bands seeking redress for governments' past management of Indian lands and assets under the Indian act, and fulfilment of lawful treaty obligations toward the claimants.

[15] Once a claim has been accepted by the federal government for negotiation, the Office of Native Claims within DIAND provides loans to the claimant group to undertake research and provide for staff. This money must be repaid from the compensation monies provided by the federal government upon resolution of the claim.

tures, fish and game advisory councils, a research advisory council to co-ordinate research in wildlife and environmental matters, as well as environmental screening panels and review boards. These structures are designed to provide the Inuvialuit with the means to protect their lifeways by providing for native participation in decision-making, in monitoring of government policy and legislation, and in implementing social and environmental protection regimes.

Geographic Definition of the Inuvialuit Settlement Region

The Inuvialuit Final Agreement constitutes a settlement of the Inuvialuit's claim, based on traditional use and occupancy to lands in the Western Arctic. Land was selected on the basis of the following criteria:

1. *established sites of traditional occupancy;*
2. *importance to the Inuit for traditional pursuits or biological productivity;*
3. *potential for future development of tourism or community sites;*
4. *historical sites and burial grounds; and*
5. *lands without proved oil and gas reserves (Section 9(2)).*

The geographic area to which most of the provisions of the Final Agreement apply is contained within the boundaries of an area defined in the Agreement as the "Inuvialuit Settlement Region" (ISR). As seen in Figure 2, the ISR can roughly be described as a parallelogram, bound on the south by the 68th parallel, on the west by the 141st longitude, on the north by the 80th parallel and on the east by the 110th longitude. The ISR covers most of the lands traditionally used and occupied by the Inuvialuit, but by incorporating within its boundaries much of the Beaufort Sea and some of the Arctic Ocean and Parry Islands, the Settlement Region is more extensive than those traditional lands.

Land Ownership Rights Which Apply to Environmental Assessment

Fee Simple Title[16]

According to Section 7 of the Agreement, the Inuvialuit obtained fee simple absolute title to approximately 91,000 square kilometres of land. Of this total approximately 12,800 square kilometres were granted with title to both the surface and subsurface resources including all minerals whether solid, liquid or gaseous and all granular materials (Section 7(1)(a)). These lands were granted in seven blocks; six blocks of about 1,800 square kilometres each, with each block near one of the following Inuvialuit communities — Aklavik, Holman, Inuvik, Paulatuk, Sachs Harbour, and Tuktoyaktuk. The seventh block of 2,000 square kilometres is located on Cape Bathurst. The remaining 78,200 square kilometres of land were granted in fee simple absolute, excluding ownership of subsurface resources (7(1)(b)).

Cumming (1985) claims that "the onshore lands traditionally used and occupied by the Inuvialuit amount to approximately 65,000 square miles (166,400 square kilometres), with an additional 90,000 square miles (230,000 square kilometres) in the offshore Beaufort Sea. With this Agreement, therefore, the Inuvialuit have title to slightly more than half of the onshore lands that they traditionally used and occupied. Figure 3 provides an illustration of the lands traditionally used and occupied within which boundaries of property rights were established. The actual blocks of land transferred to the Inuvialuit are shown in Figure 4.

Restrictions on the Fee Simple

The Final Agreement imposes two significant limitations on the rights of land ownership conveyed to the Inuvialuit. First, existing alienations apply to lands granted in both Sections (7(1)(a)) and (7(1)(b)). In the case of land near the six communities, these alienations include dispositions under the *Canada Oil and Gas Act*, under the Canada Mining Regulations and surface rights held by other private owners. Any alienations near Cape Bathurst were terminated. Title to the remaining 76,200 square kilometres was provided without prejudice to the holders of valid subsisting rights granted under the *Territorial Lands Act* or its companion regulations and other appropriate legislation (Section 7 (1) (b)). Unless the Inuvialuit and the holders of rights agree that the Inuvialuit shall administer those rights, the Agreement provides that the federal government shall continue to administer them.

The second major limitation on the Inuvialuit's fee simple absolute to the lands selected is contained in (Section 7(44)) of the Final Agreement. This provides that the rights granted by the Crown were made subject to the restriction that "title to Inuvialuit lands may not be conveyed except to Inuvialuit individuals or corporations controlled by the Inuvialuit or Her Majesty in right of Canada." This section is intended to ensure that title obtained by the Inuvialuit under the terms of the Final Agreement is to remain in Inuvialuit hands, unless it is transferred to the federal government (Keeping 1986). This clause reflects the importance attached to ensuring that Inuvialuit ownership rights and management responsibilities over these lands is maintained.

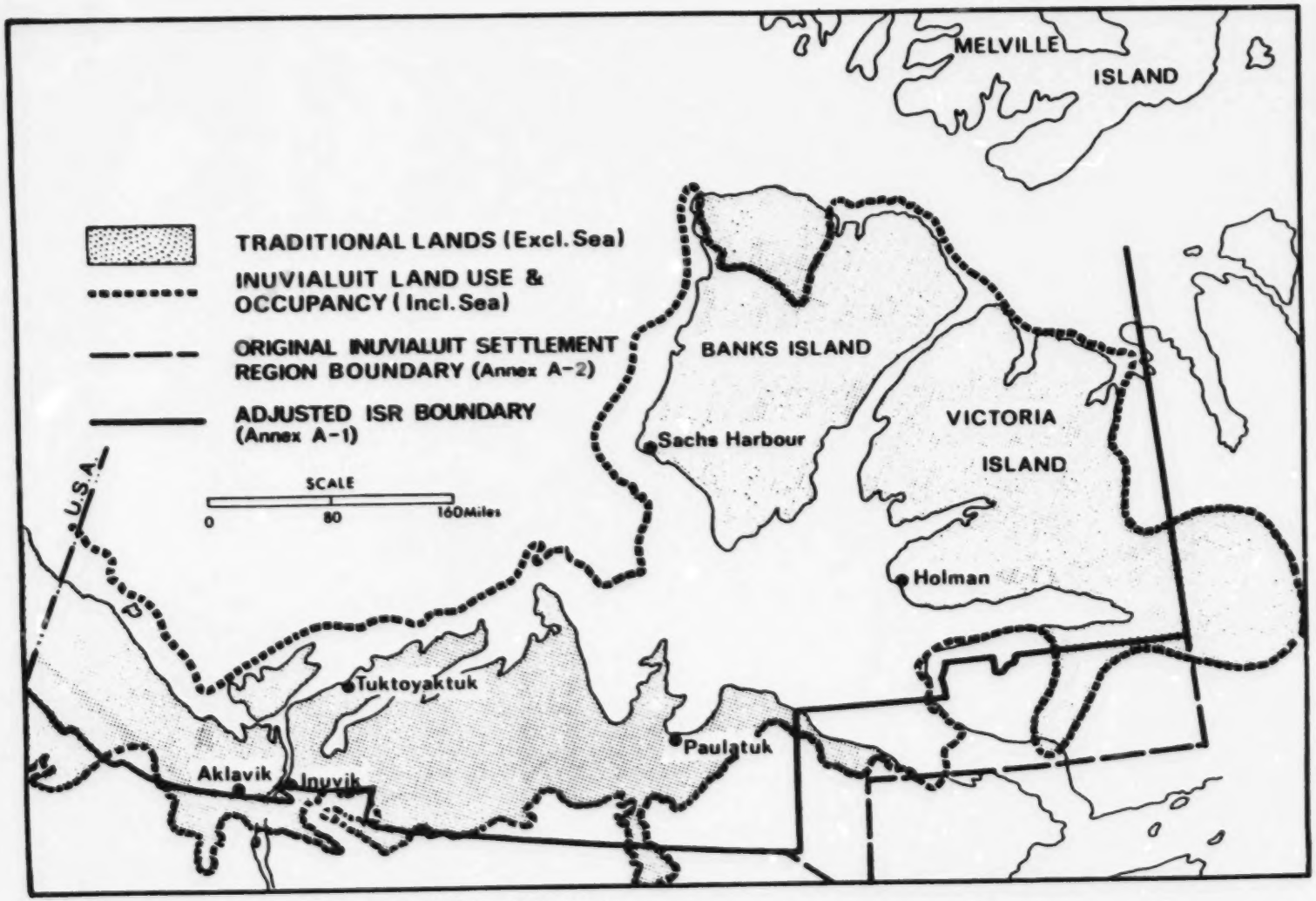
Laws Applicable to Inuvialuit Lands

The lands conveyed to the Inuvialuit under the terms of the Final Agreement and settlement legislation have ceased to be Crown lands and are subject to the laws of general application to private lands. Correspondingly, the Inuvialuit are to enjoy all of the rights of any property owner under the laws of general application, except where those are expressly limited by the Agreement itself. For example, the right of conveyance is limited as explained previously. Thus the Inuvialuit have the

[16] The strongest property right known to the common law is the fee simple absolute in possession of both the surface and the subsurface. Ownership of the fee simple absolute carries with the right to profits and revenues; the right to manage; the right to lease; the right to all accretions; and the right to control access. The fee simple absolute may be perceived as a multi-dimensional right, as it is capable of being divided horizontally, vertically and in time. Aboriginal peoples who require extensive areas of land for traditional harvesting activities may negotiate for full fee simple title to the surface to limit access to the land.

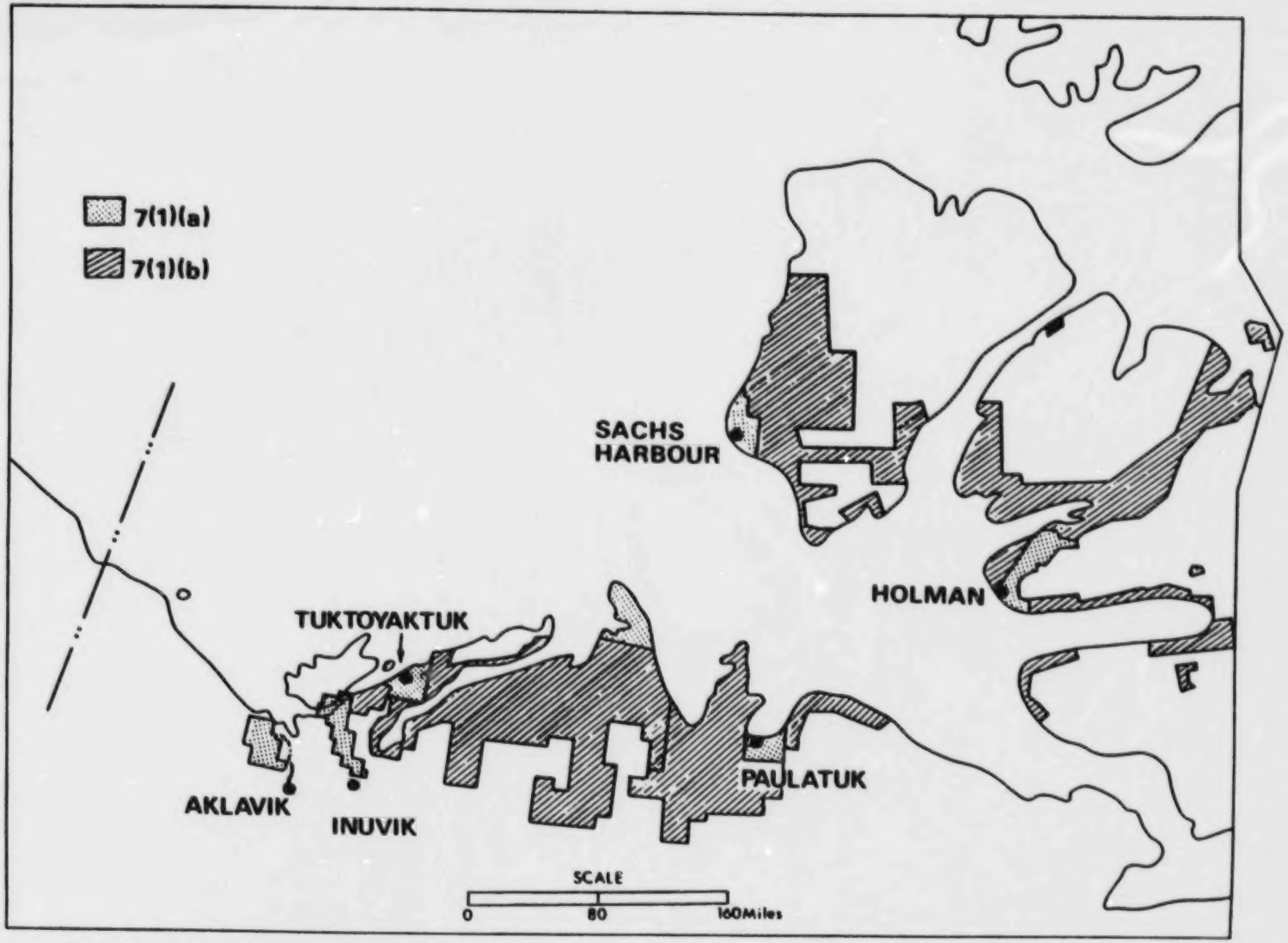
Source: Canada. Department of Indian Affairs and Northern Development, 1984c.

Figure 2. Inuvialuit Settlement Region



Source: Canada. Department of Indian Affairs and Northern Development, 1984c.

Figure 3. Traditional Inuvialuit Lands



Source: Canada. Department of Indian Affairs and Northern Development, 1984c.

Figure 4. Inuvialuit Lands Selected Pursuant to 7(1)(a) and 7(1)(b)

right to impose environmental and safety conditions on those seeking new resource exploration and development permits on Inuvialuit lands that equal or exceed those previously applicable (Section 7. (99)). Where laws are inconsistent, the Agreement prevails.

Surface Access

The provisions of the Agreement regarding surface access are important because the lands selected cover such a large area. Since existing alienations on those lands for the most part are continued, there are remaining right holders who must be able gain access to Inuvialuit lands in order to exercise those rights. In addition, certain government responsibilities may require that government officials gain access to Inuvialuit lands.

The provisions for public access are fairly simple. Prior notice and permission to enter and cross Inuvialuit lands are required by the public only for recreational use that is more than casual and individual in nature. Conditions for access include that such access must not cause significant damage, abuse, or mischief to the lands and that it must not interfere with Inuvialuit enjoyment. Government agents and employees are guarantied rights of access for purposes relating to program management or law enforcement and according to appropriate laws or approved procedures.

Access for private, commercial purposes is regulated in more detail under the Agreement. First, prior notice to the Inuvialuit is required for access for these purposes. Where the access that is needed to get to non-Inuvialuit lands is deemed significant, but temporary, it may be obtained subject to a right-of-way agreement negotiated with the Inuvialuit which provides for:

- a location least harmful to the Inuvialuit and suitable to the commercial interest, and
- matters relating to damage, mitigation, restoration and loss of use.

Where a permanent right of way is required or where Inuvialuit lands are to be entered to exercise interests in or on those lands an agreement with the Inuvialuit must be negotiated. The Inuvialuit Final Agreement refers to these surface access agreements as "Participation Agreements."

CONCLUDING REMARKS

This chapter has explained a changing government policy with respect to northern affairs and native people. It has demonstrated that, historically, native people have been excluded from direct participation in decisions affecting their lives and livelihoods. Instead, government created institutions that responded to outside interests with which native people did not strongly identify. Although policy statements remarked on the importance of preserving the Arctic environment, government programs were oriented toward providing incentives for industrial and community development in the absence of extensive environmental review.

During the 1970s, increased public concern over the biophysical and socio-economic consequences of non-renewable resource industry led to a closer examination of environmental issues through the use of public hearings. While native advocates participated in these hearings, they voiced their dissatisfaction with the overall framework in which the processes were set. They feared that land use decisions, based on the recommendations of these hearings would be implemented in the absence of resolution of their claims to land ownership and responsibility in the decision-making process. The comprehensive claims process sought to create new institutional arrangements which would, in part, provide them with responsibilities for environmental management.

The Inuvialuit Final Agreement is the only comprehensive claim that has been resolved in the Northwest Territories. Through this Agreement, new structures for environmental impact screening and review have been established. While experience with the Agreement is still new, evaluation can provide insight into the changes it has brought to the environmental impact assessment framework. The next chapter outlines the new provisions for environmental screening by comparing the procedures of the federal government with those of the new joint procedures for environmental impact screening.

CHAPTER 3: THE INSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL SCREENING

In the Northwest Territories, the initial assessment of the environmental and related socio-economic effects of development projects is co-ordinated by the Northern Affairs Program (NAP) of DIAND. The screening procedures are complex, due to the number of application points and the multiplicity of possible referrals, advisers and decision-makers. The procedures under the Inuvialuit Final Agreement add a new layer to this already complex institutional arrangement. To clarify these procedures and provide a basis for comparison, the screening stage of each program is broken down into six categories:

- institutional basis for environmental impact screening;
- scope of projects screened;
- referral to the screening authority;
- information requirements;
- participation outside of the screening authority; and
- relationship between screening and decision-making.

These categories were derived from four major sources:

- the general literature on environmental assessment, which explains areas of concern within the framework for assessment (ior example, Burton *et al.* 1984; Elder 1985; Fenge and Smith 1986; Holisko 1980; Whitney and Maclaren 1985a);
- government documents, which explains how the procedures operate (for example, Department of Indian Affairs and Northern Development 1984a; Duffy 1986; Federal Environmental Assessment Review Office 1985, 1984b, 1979, 1978);
- the authority from which each screening process is established (*Government Organization Act*, 1979; Inuvialuit Final Agreement, and *Western Arctic (Inuvialuit) Claims Settlement Act, 1984*); and
- categories of uncertainty developed in the analysis of answers provided during personal interviews with participants in the screening process.

The discussion of how the process is intended to work in the Northwest Territories draws more heavily from government documents and the *Government Organization Act* than from other sources. The Inuvialuit procedures are outlined using the Inuvialuit Final Agreement as the primary source. Each of these criteria is used to evaluate how the process is designed to work and, in the following chapter, each criterion will be used to evaluate the actual practice of environmental screening in the Northwest Territories.

THE FEDERAL APPROACH TO ENVIRONMENTAL SCREENING IN THE NORTH

The Federal Environmental Assessment and Review Process

In Canada, impact assessment was institutionalized by EARP. The Process was established in December 1973 by a Cabinet decision, and revised in February 1977. In June 1984, a Guidelines Order issued under the authority of the *Government Organization Act* outlined a number of changes designed to clarify the procedures and to provide greater accountability among government participants. Since 1974, EARP has become the most important means by which the federal government has evaluated large-scale resource development proposals in terms of their environmental, social and technical impacts (Sewell and Foster 1981). The process is Canada-wide in scope; however, its application has resulted in more public reviews in the North than in any single province. Of the 23 separate project proposals which required panel review, seven involved proposals in the Yukon and Northwest Territories.

The major objective of the Process has been to ensure that the environmental effects of federal programs and projects are considered early in the planning stages so that decisions can be made to avoid or mitigate environmental impacts (Federal Environmental Assessment Review Office 1979). The Process is divided into two major stages; initial assessment and review. Figure 5 shows the procedures that are followed in both stages. The initial assessment phase is based on self-assessment. Each department is responsible for screening the project, program, or activity proposals which it initiates or sponsors. The intent is to encourage each department within government to become responsible for and committed to environmental planning and management rather than centralizing these functions in one office (Federal Environmental Assessment Review Office 1984b). The Federal Environmental Assessment Review Office (FEARO) was established to assist in the administration of the Process. The Office may provide assistance to initiating departments in meeting procedural requirements but does not undertake project evaluation.

The first step in an initial assessment is screening, whereby important decisions regarding the necessity for further evaluation and review is determined by the initiating department. Screening has been defined as "a systematic, documented assessment of environmental implications of a proposal, including the significance of adverse environmental consequences" (Duffy 1986:3). As indicated in Figure 5, screening of proposals can result in one of nine recommendations by the initiating department. These outcomes determine whether a proposal will be subject to automatic exclusion from EARP, whether further study is required before a decision is made, whether it will be referred for public review, or if its environmental effects are unacceptable requiring modification or rejection of the proposal (Duffy 1986).

If the initial assessment recommends further review, the projects are referred to the executive chairperson of FEARO. The chairperson is then responsible for appointing members to an independent review panel. The panel receives Terms of Reference from the referring minister, and in turn is responsible for issuing guidelines for the preparation of the environmental impact statement and obtaining public input to the review. The panel reports to the Minister of the Environment and the minister of the initiating department, who decide the extent to which recommendations become requirements before a proposal is undertaken.

Only a small fraction of projects screened within initiating government departments become subject to public review. Of 1,000 projects which are screened, 100 are made subject to further study and, of these, only one may be referred to the formal review stage (Duffy 1986). Decisions or recommendations made at the screening stage, therefore, have great potential to change the outcome of project proposals. The remainder of the discussion is limited to the screening stage.

Federal Environmental Screening Procedures in the Northwest Territories

Institutional Basis for Environmental Impact Screening

The basis for EARP is found in the Guidelines Order, which was issued under an amendment to the *Government Organization Act*. The Order charges the initiating department to ensure that environmental implications of all proposals for which it has decision-making authority are fully considered. The Order has no legal force to ensure compliance and its application, therefore, is subject to the discretionary judgment of the initiating agency. Because the Order is not an Act of Parliament, it can be altered without Parliamentary consideration (Elder 1985).

Scope of Projects Screened

The Process applies to projects directly undertaken by a federal department, projects which may have an environmental effect on an area of federal responsibility, projects for which there is a federal financial commitment or projects located on lands, including the offshore, that are administered by the Government of Canada. In the Northwest Territories all land, except within the communities and land ceded to the Inuvialuit, is federal Crown land. All projects for which authorization is required, therefore are subject to environmental screening. Regulatory agencies are bound to apply environmental screening where there is no legal impediment or duplication of responsibilities. Crown corporations are expected, although not required, to implement the Process as a part of corporate policy.

The Guidelines Order specifically defined the scope of the Process to include assessment of socio-economic impacts which result directly from changes in the biophysical environment (Section 2). This definition means that economic losses resulting from environmental degradation should be included as part of the screening criteria.

Referral to the Screening Authority

Each initiating department is responsible for environmental screening under the Guidelines Order (Section 10 (1)). In the Northwest Territories, initial assessment is co-ordinated by the Northern Affairs Program (NAP) of DIAND. Depending on the size and location of the proposal, an application may be referred for screening to officials in the district office, the regional office or headquarters in Ottawa. As shown in Figure 6, the DIAND has nine district offices within the Northwest Territories and one regional office in Yellowknife.

According to a Draft Guide issued by the Northern Affairs Program to explain the process, applications for land use development proposals can be made at one of four different locations (Department of Indian Affairs and Northern Development 1984a):

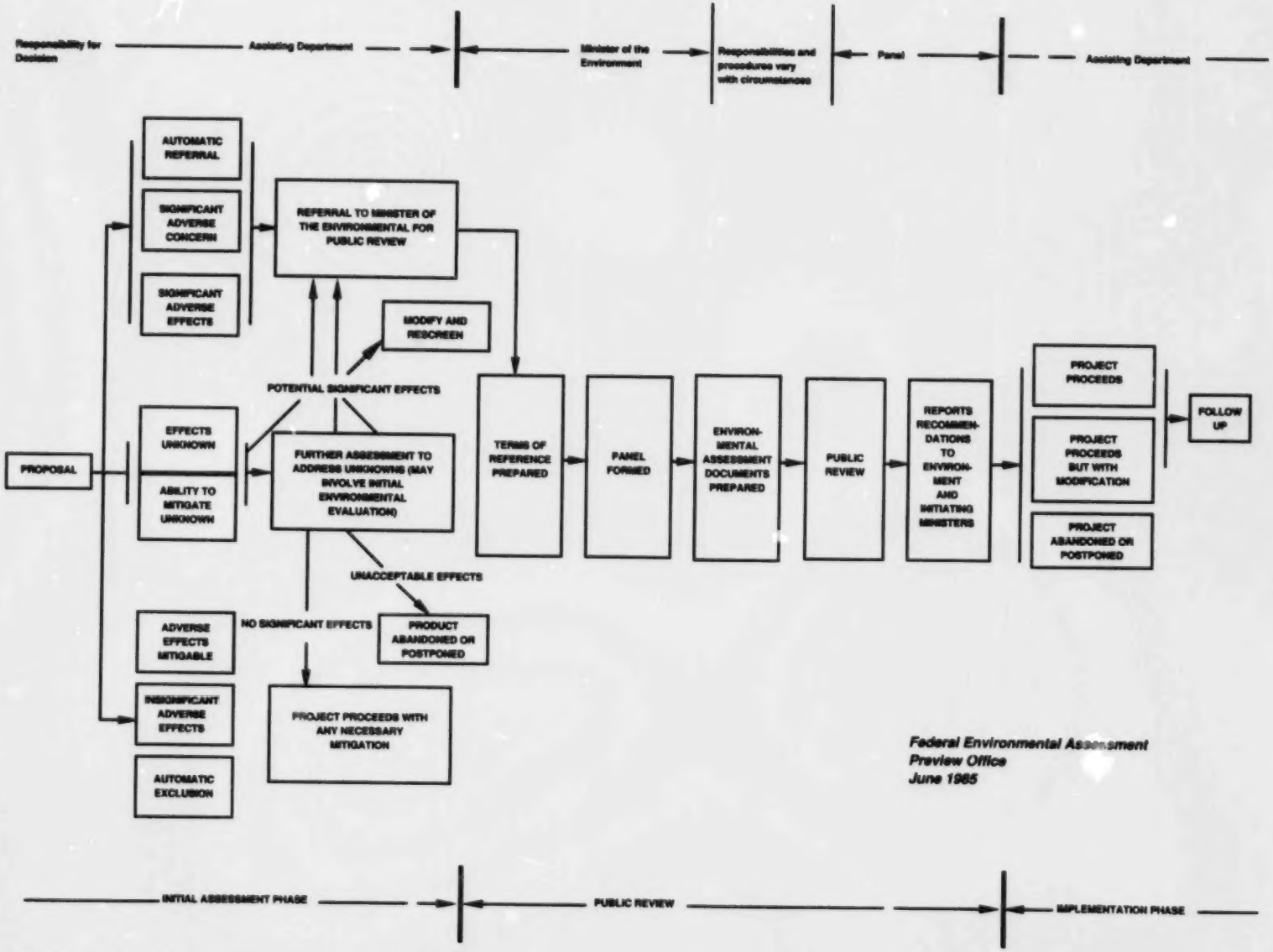
a) *the District Office in Inuvik or Yellowknife. These offices may screen small-scale proposals when considering applications for land use permits. While the Guide does not explain the meaning of small scale, two examples it provides are highway realignment and land lease applications. In these cases Land Managers located in the District offices have the authority to issue land use permits and licences. If there is some concern regarding the proposal, the applications may be forwarded to the regional office for processing. Applications made to other district offices are automatically forwarded to the regional office in Yellowknife for screening;*

b) *the Regional Office in Yellowknife, Resources Division. Applications for regulatory approvals for proposed projects are usually made to one of the Resources Divisions (e.g., Lands, Water) in Yellowknife. The resource manager receiving the application is responsible for the initial screening under EARP;*

c) *the Regional Office in Yellowknife, Office of Environment and Conservation. A developer may submit a project proposal directly to the Regional Manager, Office of Environment and Conservation in her/his capacity as the Chair of the Regional Environmental Review Committee (RERC). This is advised by the guide if the project, due to its size or potential impacts, or the level of public concern, is likely to be referred to RERC by the Resources Divisions.*

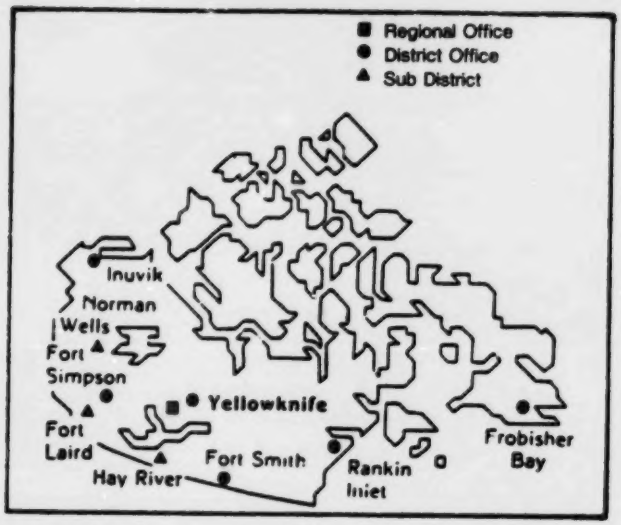
d) *the headquarters for the Northern Affairs Program in Ottawa. If the project is large (involving jurisdictions beyond the territorial borders) and complex or likely to raise significant environmental or policy issues, a developer can submit a project proposal directly to the headquarters with a formal request for screening. Screening is then conducted by the Northern Environment Directorate.*

Figure 7 traces the possible routes that an application in the Northwest Territories might follow. While the draft Guide does not explicitly state criteria used to describe minor, significant, or major projects, it suggests that following projects would be referred for screening to the offices indicated below:



Source: Couch, 1985

Figure 5. Federal Environmental Assessment and Review Process



Scale not available

Source: Canada. Department of Indian Affairs and Northern Development, 1986.

Figure 6. Regional and District Offices of DIAND in the Northwest Territories

Table 6
Guide to Project Entry Points

Regional Offices	Headquarters
minor hydrocarbon production facilities	major hydrocarbon production facilities
minor pipelines	major pipelines
hydro and thermal electric projects under 50 megawatts	hydro and thermal electric projects over 50 megawatts
highway reconstruction/access roads	major transport facilities
mines (except uranium)	oil & gas drilling programs
water diversion schemes	smelters
dredging	uranium mines
ports/coastal facilities	
forest harvesting	

Source: Canada. Department of Indian Affairs and Northern Development, 1984a:3.

Information Requirements

Information required at the screening stage is left to the discretion of the regulator to whom the application is submitted. Regulators may request simple clarification of the application such as maps or information on project design or require that an initial environmental evaluation be undertaken according to guidelines which they provide (Department of Indian Affairs and Northern Development 1984a). Government technical committees rely on their internal expertise when they review the proposal but may also request additional information from the proponent.

Participation Outside of the Screening Authority: Interagency Participation

The Northern Affairs Program has organized a number of interdepartmental advisory committees that participate in the screening procedure. If an application is referred to the regional or head office, these committees or boards provide technical advice. The principal committees include:

- Federal-Territorial Land Advisory Committee (F-TLAC) for land leases on federal land;
- Land Use Advisory Committee (LUAC) for land use permits on federal land. Separate committees are located in Whitehorse, Yellowknife and Inuvik;
- Land Advisory Review Committee (LARC) for land uses on territorial land;
- N.W.T. Territorial Water Board Technical Advisory Committee (TAC) for water licences;
- Arctic Waters Advisory Committee (AWAC) for offshore, non-shipping activity (such as oil and gas rigs, production testing, dredging); and
- N.W.T. Benefits Committee for evaluation of broad socio-economic impacts to ensure that training, employment, business and other economic impacts are provided to residents of the Northwest Territories.

Depending on the nature of the project proposal, one or several of these committees may become involved. Table 7 provides a sample of projects which require different types of authorizations from DIAND and indicates which committees assist in the evaluation of particular types of applications. A very large-scale proposal such as the Beaufort Sea hydrocarbon production and transportation application, may be subject to the regulatory requirements of several other government departments as well. If the potential impacts are considered to be not significant, the project application can continue through the normal regulatory process. The committees may suggest terms and conditions to be attached to an application approval such as particular mitigative measures.

If the potential impacts or the level of public concern is considered significant, the project may be further assessed by an Environmental Review Committee. Each territory has a Regional Environmental Review Committee (RERC), an intergovernmental advisory committee with representatives from both the territorial and federal government. In Ottawa, this review committee is called the Interagency Environmental Review Committee (IERC) and is composed of staff from the Departments of Fisheries and Oceans, Environment, Energy, Mines and Resources and Transport as well as wildlife branches of the territorial governments. (Department of Indian Affairs and Northern Development 1984a).

The Manager of the Environment and Conservation Office, who chairs the Regional Environmental Review Committee for the Northwest Territories, requires the potential developer to contact the communities that will be most affected by the proposed project. The Office of Environment and Conservation distributes project documentation to appropriate communities for review. If communities so desire, public meetings can be held at the discretion of the Office. (Department of Indian Affairs and Northern Development 1984a). The Ottawa process allows the general public to have access to screening documents and will consider public concerns if they are raised directly with staff at Headquarters. It does not, however, actively seek public opinion at this stage (Landplan 1986).

Historically, documentation of screening procedures and decisions was scant (Holisko 1980). The Guidelines Order has encouraged better documentation of the screening process and increased public access to information about screening outcomes. Under the Order, government departments are required to establish written procedures for screening to provide information to be made public about each proposal and the decision taken on its environmental significance (Sections 16 and 18). In concordance, DIAND has made its draft Guide publicly available but has yet to establish screening criteria which are available for public viewing (Landplan 1986).

Relationship Between Screening and Decision-making

Based on this further evaluation the Chairperson of the appropriate Environmental Review Committee may recommend approval of the project proposal with possible terms and conditions or that a full public review be undertaken by FEARO. The final screening decision, is made jointly by the Director, Renewable Resources and the Director, Minerals and Economic Analysis, representing environmental and socio-economic responsibilities respectively. In the case of the Northwest Territories region, a referral to the Minister of the Environment is made through the Director General of the Northwest Territories Region to the Director General of Renewable Resources and Northern Environment (Northern Affairs Program headquarters). The project is then reviewed at the Northern Affairs Program headquarters before a final screening decision is made.

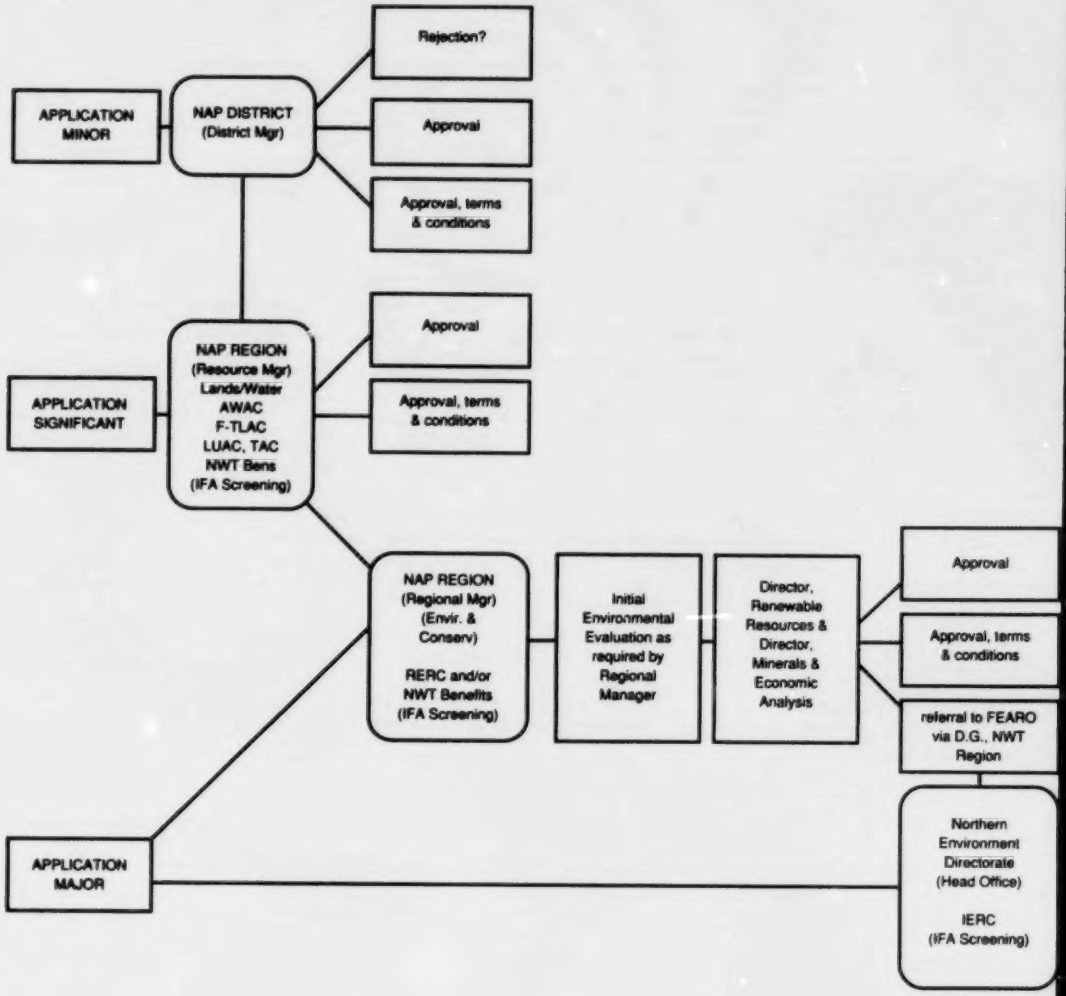
The results of the screening by Ottawa are recorded along with substantiated reasons for conclusions and recommendations, and sent to the Director General, Renewable Resources and Northern Environment Branch for a final decision. The Director General, Renewable Resources and Northern Environment decides whether the projects reviewed at headquarters should proceed as proposed, proceed with additional mitigative measures, or be referred to the Minister of the Environment for public review. If a public review is undertaken, recommendations of the review panel are reported back to the initiating minister who makes a final decision regarding the approval of the proposal.

NEW PROVISIONS FOR ENVIRONMENTAL ASSESSMENT UNDER THE INUVIALUIT FINAL AGREEMENT

The Joint Inuvialuit-Federal Environmental Impact Screening and Review Process

Like the federal EARP, the procedures established under the Inuvialuit Final Agreement set out a two-staged approach for environmental assessment called the Environmental Impact Screening and Review Process. Under Section 11 of the Final Agreement, The Environmental Impact Screening Committee was created to assess whether a proposed development requires detailed environmental impact assessment and a second body, the Environmental Impact Review Board, carries out any formal assessments deemed to be necessary by the Screening Committee. Any modifications of the recommendations the Review Board must be explained in writing by the government authority within 30 days (Section 11. (29)). This written response must also be made public (Section 11. (30)). Figure 8 indicates the pathways through which applications referred to the Screening Committee are routed.

The Inuvialuit procedures are based on joint Inuvialuit-Government representation on the committees. The Screening Committee, like the Review Board, is composed of equal participants from Government and Inuvialuit organizations. The Screening Committee has a membership of seven: three Inuvialuit members; one government member from each territory; and one federal government member. The Chair of the Screening Committee was appointed by the federal government, with Inuvialuit consent. At any one time, it is only necessary to have five members available for screening; one territorial government member in whose jurisdiction the development being screened is to be located; one federal government member; two Inuvialuit members and the


APPLICATION MINOR
NAP DISTRICT (District Mgr)
Rejection?
Approval
Approval, terms & conditions
APPLICATION SIGNIFICANT
NAP REGION (Resource Mgr) Lands/Water AWAC F-TLAC LUAC, TAC NWT Bens (IFA Screening)
Approval
Approval, terms & conditions
APPLICATION MAJOR
NAP REGION (Regional Mgr) (Envir. & Conserv) RERC and/or NWT Benefits (IFA Screening)
Initial Environmental Evaluation as required by Regional Manager
Director, Renewable Resources & Director, Minerals & Economic Analysis
Approval
Approval, terms & conditions
referral to FEARO via D.G., NWT Region
Northern Environment Directorate (Head Office) IERC (IFA Screening)

Legend

NAP — Northern Affairs Program
AWAC — Arctic Waters Advisory Committee
F-TLAC — Federal Territorial Land Advisory Committee
LUAC — Land Use Advisory Committee
TAC — Technical Advisory Committee
NWT Bens — Northwest Territories Benefits Committee

(IFA Screening) — Now possibly subject to screening under terms of the Inuviluit Final Agreement

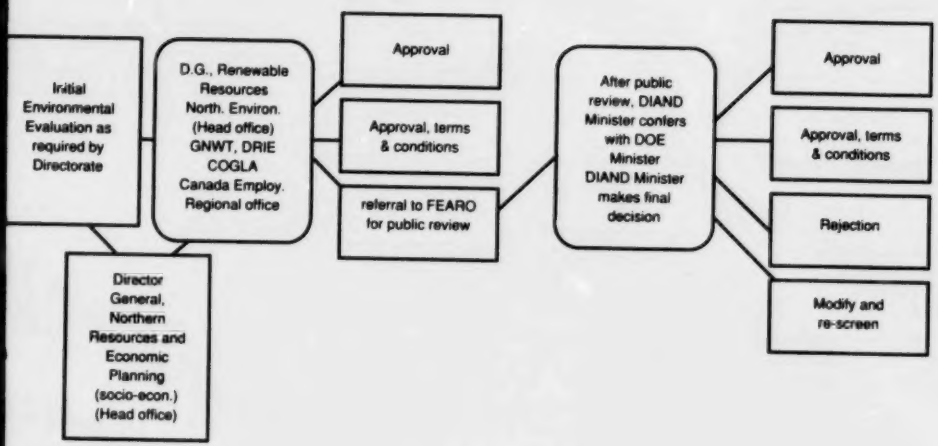

Initial Environmental Evaluation as required by Directorate
D.G., Renewable Resources North. Environ. (Head office) GNWT, DRIE COGLA Canada Employ. Regional office
Director General, Northern Resources and Economic Planning (socio-econ.) (Head office)
Approval
Approval, terms & conditions
referral to FEARO for public review
After public review, DIAND Minister confers with DOE Minister DIAND Minister makes final decision
Approval
Approval, terms & conditions
Rejection
Modify and re-screen

Figure 7. Application Flow Chart for the Department of Indian Affairs and Northern Development

Table 7

Projects and Authorizations

Legend
RERC - Regional Environmental Review Committee F-TLAC - Federal-Territorial Review Committee LUAC - Land Use Advisory Committee LARC - Land Use Advisory Committee TAC - Technical Advisory Committee AWAC - Arctic Waters Advisory Committee NWT Bens - N.W.T. Benefits Committee Note that the Inuvialuit Screening Committee may be required to evaluate any of these proposals if they affect the Inuvialuit Settlement Region

Development Project	Authorization/Advising Committee: Land use permit/RERC**, LUAC or LARC, NWT Benefits	Water Use Authorization or License TAC, RERC, NWT Benefits	Drilling Authority/AWAC, LUAC, RERC** NWT Benefits	Land Tenure Agreement or Lease/F-TLAC or LARC, RERC**, NWT Benefits
Airstrip	●	●		● *
Trail, road, highway	●	● *		●
Hydro-electric development	● *	●		●
Mine development and operation	●			●
Mineral exploration	●	● *		
Oil and Gas Operations:				
offshore exploration well			●	● *
onshore exploration well	●	●	●	
pipeline	●	●		●
production well	●	●	●	●
Power line	● *			●
Research project	● *	● *		
Rock and gravel quarrying	●			
Seismic operation (onshore)	●	● *		
Staging areas	●	● *		● *

* May not be required, depending on location and scale of project
** May also include the Interdepartmental Environmental Review Committee in Ottawa

(Adapted from Department of Indian Affairs and Northern Development 1981b:8)

Chairperson. Funding for the committee is provided by the federal government under the terms of the Final Agreement.[17] The analysis which follows is restricted to the screening phase.

Joint Inuvialuit-Federal Screening Procedures

Institutional Basis for Environmental Impact Screening

In contrast to the federal EARP, the Inuvialuit Environmental Impact Screening and Review Process places a legal obligation upon all development proponents to comply with its provisions. Its legal status is based on the the Inuvialuit Final Agreement, Section 11, which is validated by the *Western Arctic (Inuvialuit) Claims Settlement Act, 1984*. The process must be applied before any permits or licences may be granted by government. Section 11. (31) states that "no licence or approval shall be used that would have the effect of permitting any proposed development to proceed unless the provisions of this section have been complied with."

Unlike the screening procedures in DIAND, the Environmental Impact Screening And Review Process derives its authority separately from any government department or Inuvialuit agency. The Screening Committee established by the Agreement can adopt its own by-laws, rules, and procedures for internal management to ensure reasonable and expeditious consideration of applications (Section 11 (11)). The environmental impact screening procedures function largely independently of any governmental assessment processes. The procedures established in Section 11 do not substitute for governmental assessments, and alternatively, the undertaking of a governmental review need not to be determinative in the deliberations of the Screening Committee.

Because the Committee does not gain its authority from a government department or an Inuvialuit agency, it does not invite conflict of interest as is the case for departments which undertake screening as a self-assessment process. Thus, the Screening Committee can act as a watch-dog agency that ensures that environmental issues particularly important to the Inuvialuit are given full consideration at an early stage in the project design. To avoid unnecessary duplication, the Committee is required to take into account any prior governmental environmental impact review process, that, in its opinion, has adequately encompassed the assessment and review function. This decision of whether the duplication is unnecessary, however, remains with the Inuvialuit.

Scope of Projects Screened

According to the Final Agreement, the Environmental Impact Screening Process applies to all levels of projects, regardless of whether they are national, federal, regional or local in scope. All projects occurring on land in the Settlement Region or of consequence to the region are subject to screening. Where a government department issues an authority for a proposal, it must obtain recommendations from the Screening Committee before any permit can be granted or denied.

There are four categories of developments subject to the environmental impact screening process:

- every proposed development of consequence to the Inuvialuit Settlement Region that is likely to cause a negative environmental impact on present or future wildlife harvesting (Section 11. (1)(a) and Section 13. (7)(1));
- development proposals relating to the Yukon North Slope that may have a significant negative impact (Section 11. (1)(b) and Section 12. (3)(d));
- developments in the Inuvialuit Settlement Region in respect of which the Inuvialuit request environmental impact screening (Section 11. (1)(c));
- developments in areas including the Aklavik land selections where the traditional harvest of the Dene/Metis may be adversely affected, on request by the Dene/Metis or by the Inuvialuit (Section 11. (1)(d)).

The scope of environmental screening is generally limited to onshore development, but this is not the case where the process is carried out to determine wildlife compensation (Section 11. (2)).

The provision that limits screening only to onshore development may be a significant limitation to the scope of the environmental assessment process for most of the oil and gas activity of consequence to the Settlement Region has been offshore. In combination, however, Sections 11. (1), 11. (2) and 13. (7) may be interpreted that any proposals which could affect wildlife in the offshore must be subject to screening. Compensation implies economic loss, which would be considered a negative social impact occurring as a direct result of environmental change. This interpretation is in concordance with the federal EARP Guidelines Order 1984, which states that social effects directly related to environmental effects are to be considered in the federal environmental assessment procedures.

Section 2 of the Agreement defines "development" that would be subject to screening in the following way:

> *(a) any commercial or industrial undertaking or venture, including support and transportation facilities relating to the extraction of non-renewable resources from the Beaufort Sea, other than commercial wildlife harvesting; or*
>
> *(b) any government project, undertaking or construction whether Federal, Territorial, provincial, municipal, local or by any Crown agency or corporation, except government projects within the limits of communities not directly affecting wildlife resources outside those limits and except government wildlife enhancement projects.*

[17] In the initial stages of implementation, the DIAND secured funds for meetings and support services from General Revenue until transfer payments as stipulated under the Agreement became available. Once these compensation payments were passed through Treasury Board, they were routed through the Inuvialuit Regional Corporation. The federal and territorial representatives have been involved at the expense of their respective departments.

This definition gives the Inuvialuit a large scope in terms of the projects which it may screen. For example, projects ranging from underwater seismic operations for scientific purposes to road coring and the creation of access roads may be subject to screening. It has been open to interpretation whether this definition would apply only to tangible, physical development projects or whether government policy such as tax incentives for oil and gas development as it applies to the Inuvialuit Settlement Region would be subject as well. Paragraph (b) which defines the term "development" under the Agreement indicates that a project relates to a physical project. In addition, the documentation required under the Agreement is to include a "rationale for site selection" (S. 11 (12)(c)). This wording suggests that the Screening Committee is to consider physical projects only. Notwithstanding, Keeping (1986:30) argues that "the point of S. 11 is to ensure protection of Arctic 'wildlife, environment and biological activity (S. 1 (c))' and this is better done by assessing developmental thrusts at their earliest...policy stages rather than when momentum for a particular implementation scheme has already built." She also provides some legal interpretations which suggest that "undertakings" are not confined to physical things and concludes that "the better view would seem to be that government policy is subject to screening, and possible review, under Section 11 of the Agreement" (Keeping 1986:30).

Referral to the Screening Authority

The Inuvialuit Final Agreement states that "the proponents of a development required to be screened shall submit a project description to the Screening Committee during the preliminary planning stage" (Section 11 (12)). According to the Agreement, "upon receipt of a project description, the Screening Committee shall expeditiously determine if the proposed development could have a significant negative environmental impact" (Section 11 (13)). The wording implies that there is a direct route between the development proponent and the Screening Committee. There is no mention that either a government department or an Inuvialuit agency would act as intermediary to refer projects on to the Screening Committee.

Information Requirements

Under Section 11(12), the project description submitted by the project proponent must contain the following information:

- the purpose of the project;
- the nature and extent of the proposed development;
- the rationale for the site selection;
- information and technical data in sufficient detail to permit an adequate preliminary assessment of the project and its environmental impact.

No further information requirements are outlined in the Final Agreement.

Participation Outside of the Screening Authority

The Final Agreement provides no guidance regarding inter-agency or public involvement at the screening stage. No formal mechanism was established to share information between government research branches or technical committees and the Screening Committee. In addition, there is no explicit provision at the screening stage to ensure that the screening decisions made public.

Relationship Between Screening and Decision-making

Having received a submission, the Committee is charged to expeditiously evaluate the proposal and make a written report to the governmental body competent to authorize the development. The Committee may come to one of three findings:

1. *that the proposal would have no significant negative environmental impact and therefore may proceed without further assessment pursuant to the Final Agreement;*
2. *that the proposal could have a significant impact and requires assessment and review as provided in the Agreement; or*
3. *that the proposal has deficiencies of a nature that warrant a termination of its consideration and the submission of another project description (Section 11. (13)).*

If a proposal requires further assessment and review, the proposal is referred to the Environmental Impact Review Board. The Review Board is required to evaluate the information it receives and recommend to the responsible government authority whether or not the development should proceed and, if applicable, the terms and conditions, including mitigative and remedial measures which should be included in the approval. The Review Board may also recommend further assessment of the proposal (Section 11. (24)).

SUMMARY OF FINDINGS

The frameworks for environmental screening provided by EARP and the joint Inuvialuit-Government Environmental Impact Screening and Review Process are similar in form. Both adopt a two-stage approach to assessment and review in which the screening authority has the responsibility to refer project proposals for more extensive review if adverse environmental consequences are considered to be significant. While the government procedure allows involvement at its discretion, the Inuvialuit procedure is a joint procedure that provides for mandatory participation from government, both territorial and federal and Inuvialuit representatives. Table 8 summarizes the findings.

An important departure from the federal framework is the legal obligation placed on development proponents to comply with screening procedures established by the Inuvialuit Final Agreement. Unlike the Guidelines Order, which can be changed without reference to Parliament, the Inuvialuit Final Agreement is validated by the *Western Arctic (Inuvialuit) Claims Settlement Act, 1984*. This obligation strengthens the environmental impact assessment framework and reduces the discretion characteristic of the federal provisions for environmental screening.

Both procedures allow for evaluation of environmental and related social effects of project proposals. The federal procedure is restricted to projects initiated or sponsored by the federal government or which occur on federal lands, including the offshore. In the Northwest Territories, this restriction may not be a significant limitation because the federal government retains jurisdiction over most of the land base. The restriction on its application for Crown corporations and regulatory agencies has greater potential for limiting the scope of screening. The Inuvialuit Final Agreement has no such restriction, and therefore, the Inuvialuit screening procedures may be applied to a wider range of projects than the federal procedures.

Referral to the federal screening procedures is automatic when an application is made to the DIAND The Inuvialuit Final Agreement indicates that referral occurs once the proponent submits a project description to the Screening Committee. It is not clear if the government authority plays a role in the referral procedures and uncertainty in this aspect may cause inconsistency in referring projects to the Screening Committee. The information requirements for both procedures are general, including a project description and rationale. Both make requirements discretionary and documentation about the procedures are scant. Provisions for public involvement are also left to the discretion of the screening agency and involvement from other agencies in the screening phase varies according to the nature of the project.

In both cases, the screening procedures rarely result in a refusal at the screening stage. If significant environmental concern is raised at the screening level, the application is referred to a higher level for more intensive review. Of particular concern is that there is no provision in the Final Agreement to allow the Screening Committee to recommend terms and conditions to the acceptance of a project proposal. If strictly applied, this omission could result in project delay as projects requiring terms and conditions may be referred to the Review Board for more intensive review. The government authority would be obliged to wait until the Review Board completed its assessment before any permit or other authorization were issued.

As indicated in this summary, the procedures for environmental screening as explained in the draft Guide and the Inuvialuit Final Agreement leave much room for interpretation. No conclusions can be drawn about the process without an understanding of how the written procedures have been implemented. Using the same criteria, the following chapter examines how the processes have been carried out in practice, identifying areas of concordance and divergence with the written procedures.

Table 8
Summary of the Institutional Framework for Environmental Screening

Evaluative Criteria	Northern Affairs Program Screening	Joint Inuvialuit-Government Screening
Institutional Basis	—Guidelines Order, 1984 can be modified without reference to Parliament	—Inuvialuit Final Agreement & —*Western Artic (Inuvialuit) Claim Settlement Act, 1984*
Scope of Projects Referred	—Environmental and related social impacts —Restricted to federally-sponsored projects —Crown Corps. and regulatory agencies expected but not required to comply	—Environmental and related social impacts —All projects except within communities and except wildlife enhancement projects
Referral	—Automatic when an application is received	—From proponent to Screening Committee
Information Requirements	—Not specified in Order —Draft Guide suggests project description & rationale, possibly an IEE	—As stated in S. 11(12) of the Agreement —Possibly further information as required by Committee
Participation	—Interagency committees established at regional and headquarters level —Information sent to interested public	—Interagency participation through membership of the Committee —No other interagency or public involvement stated in the Agreement
Screening & to Decision-making	—Can approve a proposal at the district level —Can apply terms & conditions to project approval —At regional level, can refer on for screening decision	—Can recommend approval government authority —Cannot apply terms & conditions to project approval —Can refer to public review

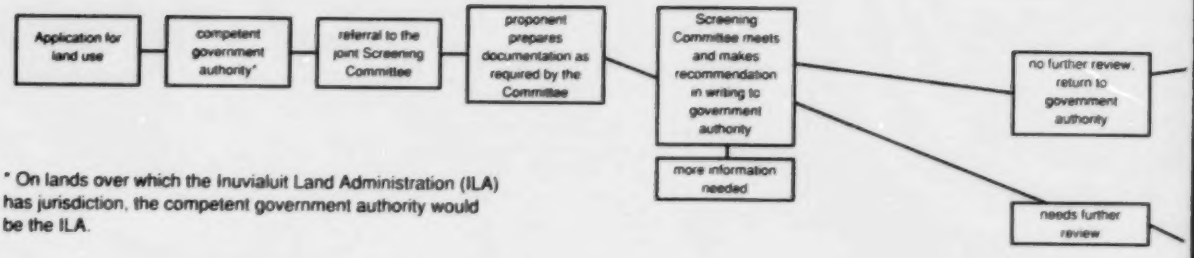
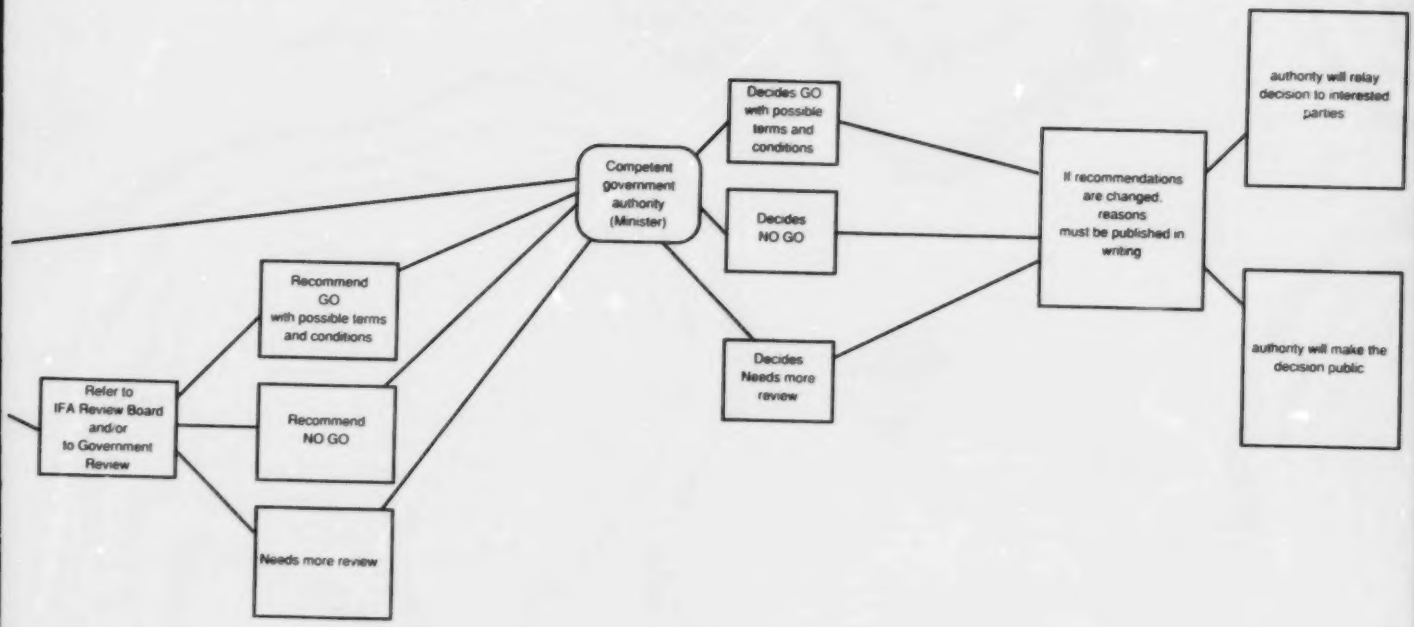

Application for land use
competent government authority*
referral to the joint Screening Committee
proponent prepares documentation as required by the Committee
Screening Committee meets and makes recommendation in writing to government authority
more information needed
no further review, return to government authority
needs further review
* On lands over which the Inuvialuit Land Administration (ILA) has jurisdiction, the competent government authority would be the ILA.

Figure 8. Joint Environmental Impact Screening and Review Process under the Inuvialuit Final Agreement


Refer to
IFA Review Board
and/or
to Government
Review
Recommend
GO
with possible terms
and conditions
Recommend
NO GO
Needs more review
Competent
government
authority
(Minister)
Decides GO
with possible
terms and
conditions
Decides
NO GO
Decides
Needs more
review
If recommendations
are changed,
reasons
must be published in
writing
authority will relay
decision to interested
parties
authority will make the
decision public

CHAPTER 4: THE PRACTICE OF ENVIRONMENTAL SCREENING

Building on the previous chapter, which described the institutional arrangements for environmental impact screening in the Northwest Territories, this chapter examines how these arrangements have been applied to screening of project proposals. The application of screening procedures under DIAND are discussed briefly to provide an understanding of their strengths and weaknesses. The same categories used in the previous chapter will be used here to discuss the application of each procedure. This review is based on concerns that have been raised in the impact assessment literature as well as comments voiced by respondents during personal interviews held in the fall of 1986. Primary attention will be placed on the experience of the joint Inuvialuit-Government Screening Committee as it has applied the procedures outlined in the Inuvialuit Final Agreement. Discussion will focus on four case examples which were screened during the period April 1986 to November 1986.

ANALYSIS OF FEDERAL SCREENING PRACTICE IN THE NORTHWEST TERRITORIES

Understanding of Application of Institutional Basis

Because the basis for federal environmental impact screening is not grounded in law, its application has relied on the favourable discretion of responsible government authorities. As a result criticisms have focused on the *ad hoc* nature of screening, its lack of accountability and seemingly inconsistent application (Federal Environmental Assessment Review Office 1984b). According to the results of a workshop undertaken by Landplan consultants, screening by the District and Regional Managers in DIAND is undertaken on an informal basis (Landplan 1986).

Scope of Projects Screened

The Process applies only to projects that are undertaken in areas involving federal jurisdiction. In the Northwest Territories, virtually all of the land is federal Crown land. All private or public development projects, therefore, except those undertaken within the communities have been subject to the EARP. In theory, there is no restriction over the levels of activity over which environmental impact assessment is used. In the context of the federal EARP, most local or regional projects in the provinces are dealt with by provincial processes where the provinces own the land and have statutory management responsibilities. In the Northwest Territories, this responsibility rests with DIAND and, under the Department's direction, screening has been applied to projects ranging in scale from road coring at the District Office through to large scale oil and gas transportation proposals such as the Norman Wells pipeline project which was referred for a public review.

While the Guidelines Order does not restrict the application of environmental screening to tangible projects, screening has not been applied to government policy (Burton *et al.* 1983). If policy is not clarified at an early stage in project evaluation, public review may lead to inconclusive results. For example, the panel which undertook a public review of the proposal to drill an exploratory well in Lancaster Sound was asked to give regional clearance for development in the area. The panel reported that a positive decision could not be made in a policy vacuum and recommended that an overall plan for the region be developed before any approvals for regional development be granted (Federal Environmental Assessment Review Office 1979).

More recently, a public review attempted to review an entire development concept which included exploration, development and transportation proposals for the Beaufort Sea region. The review phase was the point at which public intervenors had an opportunity to question government regional policy and overall development goals. During interviews, frustration was expressed by territorial government representatives that the policy questions were raised too late in the Process and information on alternatives could not be produced in sufficient detail to permit a comprehensive evaluation which would provide specific recommendations. These criticisms were also voiced by public intervenors who published papers about the success of the review process (Fenge 1984; Rees 1984).

Referral to the Screening Authority

Referral to the screening authority is automatic when an application is made for a development project. Thus initial assessment is not necessarily a separate step in the Process. Its implementation is left to the favourable judgement of the government official who first receives a proposal. In the case of the Northwest Territories, this judgement is used when applications from the District Offices (Inuvik or Yellowknife) are passed on to the regional office for processing. It is also apparent when the decision is made to forward the application to the Office of Environment and Conservation in the Regional Office for further screening.

Information Requirements

Information required at the screening stage is left to the discretion of the regulator to whom the application is submitted. Regulators may request simple clarification of the application. According to the Landplan workshop, if the application is referred to the Regional Environmental Review Committee (RERC), a proponent will provide a project description which includes an evaluation of needs and alternatives. The chairperson of the RERC may also require that an Initial Environmental Evaluation (IEE) be undertaken according to guidelines which they provide.

Participation Outside of the Screening Authority

Interagency Participation

Interagency participation in the screening stage varies according to which office the application is reviewed. Access

to the screening process by other agencies or technical committees is generally not available unless the Regional Office has received the proposal. According to the RERC chairperson, if an application moves beyond the District Office, then high priority is given to interagency review through government technical committees such as the Land Use Advisory Committee (LUAC), the Arctic Waters Advisory Committee (AWAC) and the Regional Environmental Review Committee (RERC). Interest groups outside of the territorial or federal government such as native negotiating committees may be given observation status on advisory committees. This status ensures that they are informed of the applications being made but they are not asked to contribute to the decision-making process.

Territorial government representatives believe that RERC does not provide for participation from a broad spectrum of interests. According to these representatives, referral to the RERC occurs late in the application process. During interviews, territorial government representatives stated that they tend to make comment on government commitments rather than reviewing alternatives. The maximum time allotted for review of a land use permit application is 42 days; a time frame that is sometimes difficult to meet if full consultation with members of the territorial government and the public throughout the region is sought. The opportunity for debate and comment is further limited because the time has occasionally been shortened to meet the proponent's operating schedule. This type of action works against full consideration of program alternatives.

Both territorial government representatives and native organizations seek a greater role for themselves in managing non-renewable resource development. This interpretation, resulting from interviews, is reinforced in recent policy documents issued by the territorial government (see, for example, Government of the Northwest Territories 1983; Larson 1986). Department officials in Ottawa, screening large-scale proposals occurring in the territories, remove the decision-making function further from the region. Headquarters expects that the NAP regional office will ensure that public consultation is provided. Major interest groups provide comments directly (Landplan 1986) Currently reasons for decisions are not standardly available to the public (Landplan 1986). The process in Ottawa relies heavily on internal experts and does not seek extensive comment from the local public or territorial government. As a result, the large-scale project proposals that have the greatest potential for causing significant changes for the local population are screened without substantial input from the local institutions or affected public.

Public Participation

According to the territorial government representatives who were interviewed, public participation at the screening stage consists in informing the public in the immediate vicinity of the proposal rather than obtaining public input. If an application is referred to the RERC, the chairperson gives the proponent the responsibility for carrying out an information program about its proposal. Procedures do not include provision for wide dissemination of documents that may help in understanding the components of the proposal nor do they allow for an active role for public involvement. Only if screening results in referral for public review is public opinion actively sought.

Relationship Between Screening and Decision-making

Two general observations can be made with respect to screening of proposals and the decisions that result. First, as indicated in the flow diagram in the previous chapter, the process is structured so that it is easier for a local decision-maker to approve a project than it is to reject one. Each time a project proposal warrants significant concern, it is passed on to a higher level of authority for review. The ultimate decision to reject a project rests with the Minister of DIAND. In practice, projects may have been rejected at the regional level, however, the literature which describes the process omits this option. The resulting picture invites criticism about the pro-development stance of the department if there is no office, other than the minister's, who is empowered to reject a proposal on environmental grounds.

The second observation from a review of the initial assessment procedures is that the number of committees involved makes the process unwieldy and difficult to integrate effectively. The linkages among these have been detailed in several recent works (Dimensions Planning 1986; MacKinnon 1986) and will not be discussed here. Their complexity is suggested, however, by a flow diagram drawn up by a proponent who attempted to clarify the regulatory framework for his own understanding. Figure 9 shows the preliminary analysis.

The screening provisions under DIAND are not undertaken in isolation of other regulatory requirements for proponents. The Nielsen Task Force on Program Review identified as many as 72 different federal acts, regulations and territorial ordinances with which a northern developer might have to comply (Dimensions Planning 1986). New procedures such as those established by the Inuvialuit Final Agreement will add to the complexity of the assessment process and suggests a need for clarification of how these procedures are integrated with one another to provide for efficient and responsible initial assessment decisions.

ANALYSIS OF INUVIALUIT SCREENING PROCEDURES

The analysis of the Inuvialuit Procedures is based on four case examples that were subject to screening from April 1986 to December 1986. The cases were the first to be screened, and as such were considered test cases for all parties concerned. Table 9 highlights the major characteristics of each case used in the evaluation. Figure 10 indicates the geographic location of each of the proposals.

The first proposal to be screened by the joint committee was an application by Gulf Canada to undertake an extended flow test and the first tanker shipment of oil from the Canadian Beaufort Sea region. The proposal was presented to the Screening Committee on April 23, 1986 at which time the Committee requested additional environmental and technical information. A second meeting was held on June 6, 1986 after which the application was returned to the regulatory authority, the Canada Oil and Gas Lands Administration (COGLA), with concerns regarding the departure time and route. These

Table 9
Major Characteristics of each Screened Proposal

Project type	Proponent	Approval Type Agency	Permitting Status	Proposal
Extended flow test	Gulf Canada	Amendment to an Authority to Drill	COGLA	approved & undertaken
Acess road	Gulf Canada	Land Use Permit	DIAND	not approved
Deep water port	Monenco/Interlog	Lease & Land Use Permit	DIAND	referred to Review Board
Shoreline protection	Tuktoyaktuk/ Territorial Government	Dredging Licence	DIAND	not approved more information required

concerns were incorporated into a Letter of Approval sent to Gulf. The flow test was conducted in the summer months and the tanker started out from the Beaufort Sea on September 18, 1986.

The second proposal was an application by Gulf Canada for a land use permit to allow a test vehicle to travel from Inuvik to Tuktoyaktuk. This application was discussed at a meeting of the Screening Committee on June 6, 1986. Concerns regarding the sensitivity of the ground layer and for nesting birds along the route were expressed by members. These concerns were reported to the Regulatory Authority, the District Manager, DIAND, who sent a letter to Gulf which indicated that the application was denied.

The third proposal evaluated by the Screening Committee was examined on July 3, 1986. The Committee reviewed an application for a land lease and a land use permit from Monenco/Interlog Consultants Limited to construct a deep water supply port at King Point. Because of the scale and scope of the proposal and the importance of the region for wildlife harvesting, the Committee referred the proposal to the Review Board. A public review has yet to be held for this proposal.

The final proposal examined in this study is an application by the Hamlet of Tuktoyaktuk to obtain a dredging licence from DIAND. Dredging was considered necessary by the Hamlet to obtain sand for fill material to create a berm to protect the shoreline along a portion of the Tuktoyaktuk Peninsula. The Screening Committee reviewed the proposal on August 29, 1986 and concluded that the application contained insufficient information to make a decision to proceed with the project. The need for more information was communicated by letter to the Acting Regional Manager, Lands Branch on November 6, 1986. DIAND was not in a position to issue a dredging licence until the Screening Committee received the information and completed its assessment of the proposal. This delay resulted in a requirement by the Hamlet to look for other alternatives to protect the shoreline before the upcoming winter storm months.

Each of these proposals involves the federal government as the decision-making agent. Lands within the Inuvialuit Settlement Region which are not disposed to the Inuvialuit are subject to regulations administered by DIAND. On these lands, however, the Department must obtain recommendations from the Screening Committee before any permit can be granted or denied. On lands disposed to the Inuvialuit, the Inuvialuit Land Administration is responsible for issuing authorities for land use.[18] The procedures for screening under disposed lands will not be discussed for two reasons. First, during the study period, there was no application referred to the Screening Committee for a project involving disposed lands. Second, as the research is focused on changes in government response to the new requirements posed by the screening procedures, an analysis of the Inuvialuit procedures falls outside the scope of the study.

Understanding of Application of Institutional Basis

All of the government representatives interviewed, both with the territorial and the federal government, recognized that the Inuvialuit Final Agreement supersedes the *Territorial Lands Act* and its regulations. Government officials said clearly that the lands granted to the Inuvialuit were disposed lands over which no federal or territorial government Department had jurisdiction, except that which may not have been assumed by the Inuvialuit. For example, the Canada Oil and Gas Lands Administration (COGLA) has retained its mandate to apply its drilling regulations and issue drilling authorities on Inuvialuit lands. In keeping with standard procedures for competitive companies, information obtained from drilling is confidential to COGLA and is not provided to the Inuvialuit. Both COGLA

[18] On lands disposed to the Inuvialuit (7 (1) (a) and 7 (1) (b) lands), the Inuvialuit Land Administration (ILA) replaces the federal department (usually DIAND) as the issuer of authorizations. The ILA was created to supervise, manage and administer disposed lands. A draft set of Rules and Procedures have been developed which are implemented by the ILA. Within the Rules and Procedures, applications for land use are reviewed by the ILA and are sent to the appropriate Hunters and Trappers Committee (HTC) for comment. From there the application is sent to the Inuvialuit Land Administration Commission (ILAC) for approval. Any HTC may request the chair of the Inuvialuit Game Council to consider a proposal for development for an environmental screening (Inuvialuit Rules and Procedures, Section 7(58)). If the Game Council decides that an environmental impact screening is necessary, the proposal is passed on to the Commissioner of the ILA who initiates the referral. The recommendations of the Screening Committee are then provided to the Commissioner who may then make a final decision (Inuvialuit Land Administration, Rules and Procedures, Section 7 (63)). The decision is communicated to the Administrator for the ILA who then issues an authority for land use or turns down the application.

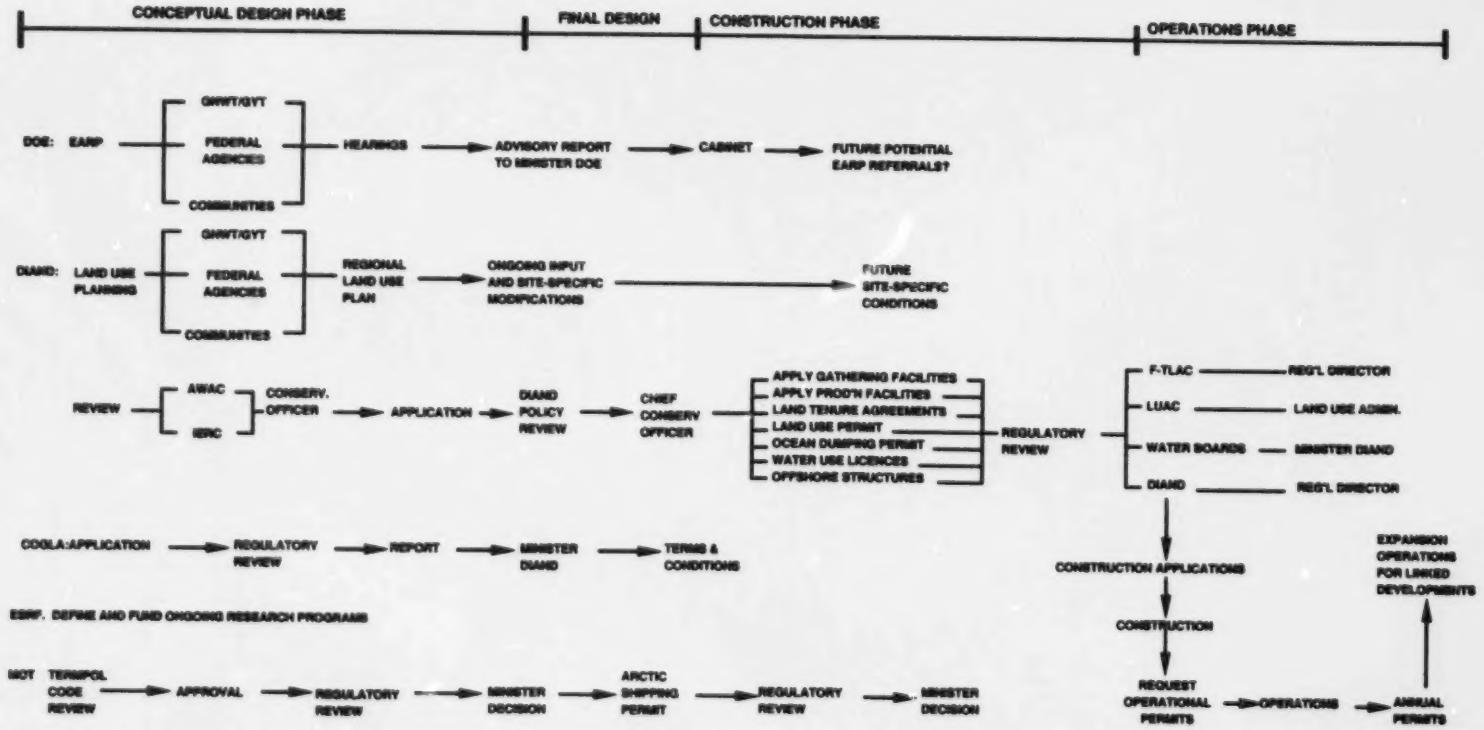
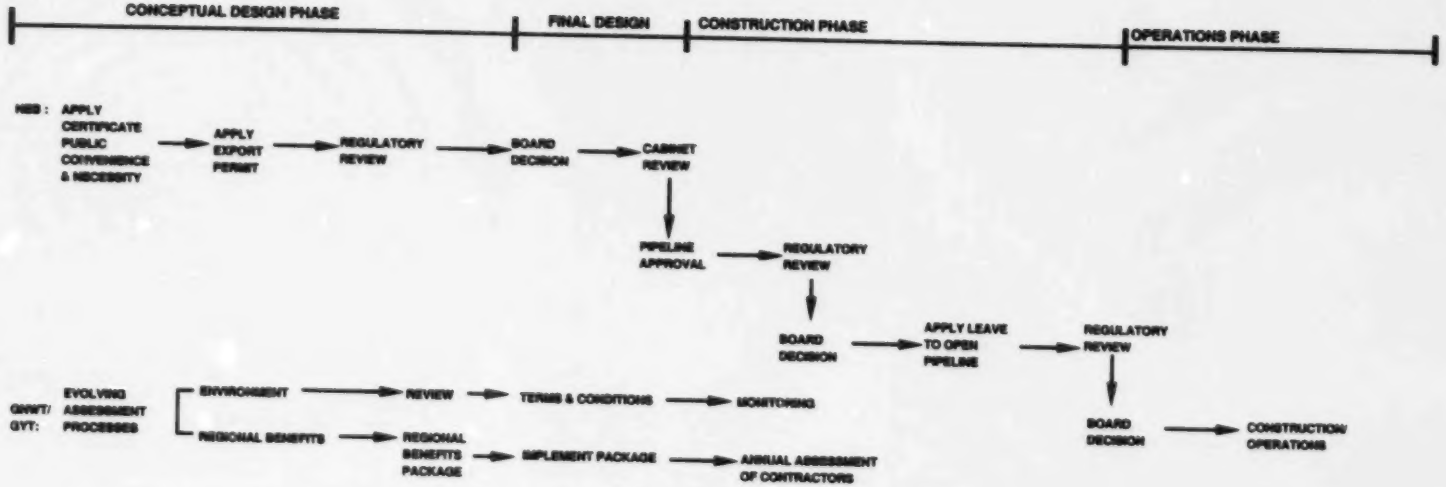


Figure 9. Proponent Conception of Necessary Approvals for Development Application



KEY TO ACRONYMS IN ORDER OF APPEARANCE

DOE	Department of Environment
EARP	Environmental Assessment and Review Process
GNWT	Government of the Northwest Territories
YTG	Yukon Territorial Government
AWAC	Arctic Waters Advisory Committee
IERC	Interagency Environmental Review Committee
DIAND	Department of Indian Affairs and Northern Development
F-TLAC	Federal-Territorial Land Advisory Committee
LUAC	Land Use Advisory Committee
COGLA	Canada Oil and Gas Lands Administration
ESRF	Environmental Studies Revolving Fund
MOT	Ministry of Transport
NEB	National Energy Board

Source: Gulf Canada, Personal Communication, 1986

Base map adapted from Department of Indian Affairs and Northern Development (1984c)

Figure 10. Approximate Location of Screened Proposals

representatives interviewed stated that the Inuvialuit may take over this function at any time, but as yet they have not found it practical to establish the necessary institutions to do so.

Industry representatives who were interviewed understood their obligation to comply with the Inuvialuit Final Agreement, especially with respect to projects located on land. When asked about the offshore regions, industry representatives generated less certain responses. This uncertainty is discussed in more detail in the following section.

Scope of Projects Screened

The four case examples show that both industry and local government-sponsored projects have been made subject to the Process. There remains, however, much uncertainty over the types of projects that will be subject to screening. Figure 11 indicates the variety of opinion that was generated when respondents were asked what kinds of projects would be screened by the Screening Committee.

The Agreement states that any government undertaking within the boundaries of the communities that does not affect wildlife outside or any wildlife enhancement projects does not fall under the definition of development for the purposes of screening (Preamble). Any other activity of a national, federal, regional or local scale is subject to screening if it is likely to cause a negative environmental impact that could have a significant negative impact on present or future wildlife harvesting (Section 13 (7)). There may be some practical difficulties with this definition which have yet to be tested. First, the term "significant negative impact" has yet to be defined in terms of qualitative or quantitative criteria which might determine whether the Inuvialuit screening procedures should be applied. Second, the territorial government remains responsible for the overall management of renewable resources in the territories and will require access to Inuvialuit lands to carry out its responsibilities.

One territorial government representative in the Renewable Resources Department suggested that the Department has a right of access to all Inuvialuit lands to carry out its wildlife management functions without the need for authorization from the Inuvialuit Land Administration (ILA). Another representative stated that this right may be obtained through a licence from the ILA. Government agents fear that under the second interpretation, now adopted by the ILA, the Inuvialuit have *de facto* control over the management approach and any research that may be undertaken by the territorial government by controlling its access through the licensing procedure.

As mentioned in Chapter 3, projects initiated in the offshore are to be screened if they involve wildlife compensation (Sections 11 (2) and 13 (7)). These sections apply to proposals which pose a negative impact on wildlife, wildlife habitat, and/or wildlife harvesting. Most of the offshore activity of consequence to the Settlement Region involves the oil and gas industry and the results of interviews with members of the industry highlight areas of uncertainty over their legal requirements as proponents. While industry support for Inuvialuit land ownership rights was strong, its support for Inuvialuit jurisdiction pertaining to projects initiated in the offshore regions was much less clear. Members of the oil and gas industry remain uncertain about their obligations to comply with the screening procedures established by the Agreement. For example, all industry representatives indicated that corporate policy ensured that the Inuvialuit would be informed of their activities in the offshore region, but they believed that they were not legally obliged to adhere to the process for projects initiated offshore.

This uncertainty may arise because both Gulf and Esso retained drilling authorities and land use permits at the time the Agreement was signed. Only Gulf has had a proposal in the offshore evaluated by the Screening Committee. One industry representative remarked that if the company did not initiate contact with the Inuvialuit, its project(s) would not require screening. Any proposals that the company put forward to be referred to the Screening Committee, however, would likely be welcomed by the Inuvialuit.

The Agreement does not distinguish between Inuvialuit and non-Inuvialuit development projects. This lack of explanation suggests that if Inuvialuit projects are of a commercial, industrial, or government nature, they will also be subject to screening. The Rules and Procedures of the ILA apply to all applicants for land use, including Inuvialuit. The Land Administrator for the Inuvialuit indicated that special provisions exist for Inuvialuit ventures. Inuvialuit proposals, however, must still meet environmental screening requirements. For example, the dredging project in Tuktoyaktuk was supported by the Hamlet Council, composed of Inuvialuit representatives. The proposal was nevertheless obliged to comply with screening procedures and recommendations, which resulted in project delay and possibly, re-design.

So far, each proposal that has been evaluated by the Environmental Impact Screening Committee has been a tangible, physical development. In discussions with all parties involved, the Screening Committee was viewed like an advisory committee which contributed its recommendations to the decision-making process in the context of permitting and licensing. There was no suggestion that the Screening Committee would actually be called upon to review government or Inuvialuit policy with respect to a particular kind of development. It is possible, however, that if a particular class of projects were to be consistently referred to the review stage and turned down, that policy with respect to these projects would have to be re-evaluated.

Referral to the Screening Authority

The responsibilities for referring projects to the Screening Committee are not well understood by participants. Different interest groups have differing interpretations of who is responsible for making referrals to the Screening Committee. Figure 12 shows the variety of interpretations which were expressed during interviews.

The Agreement does not make direct mention of the referral process. Section 11(12) of the Agreement reads "the proponents of a development required to be screened shall submit a project description to the Screening Committee during the preliminary planning stage". There is no mention about who makes this requirement and/or ensures that it is met. In practice, the projects have been reported by different sources

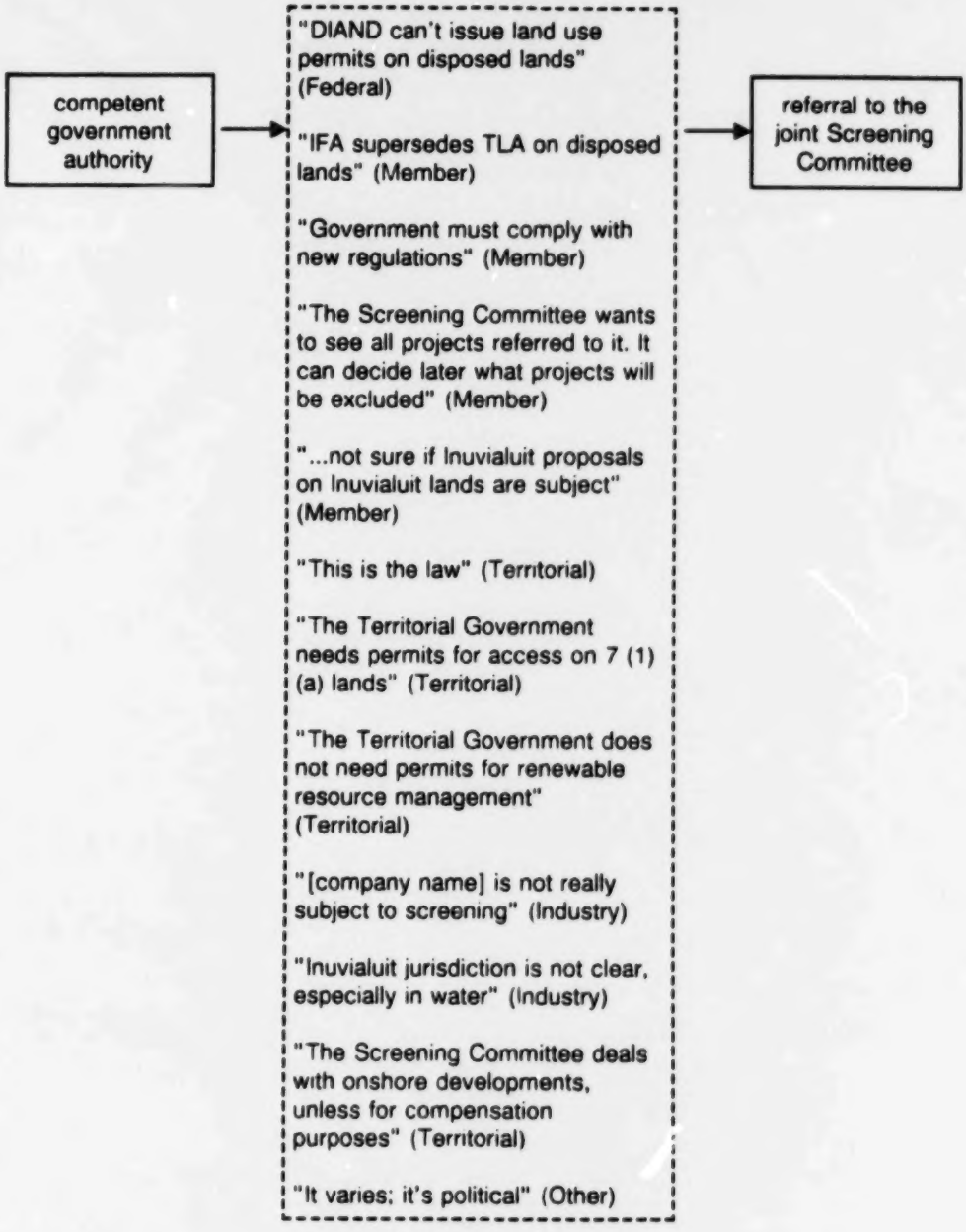

competent government authority
"DIAND can't issue land use permits on disposed lands" (Federal)
"IFA supersedes TLA on disposed lands" (Member)
"Government must comply with new regulations" (Member)
"The Screening Committee wants to see all projects referred to it. It can decide later what projects will be excluded" (Member)
"...not sure if Inuvialuit proposals on Inuvialuit lands are subject" (Member)
"This is the law" (Territorial)
"The Territorial Government needs permits for access on 7 (1) (a) lands" (Territorial)
"The Territorial Government does not need permits for renewable resource management" (Territorial)
"[company name] is not really subject to screening" (Industry)
"Inuvialuit jurisdiction is not clear, especially in water" (Industry)
"The Screening Committee deals with onshore developments, unless for compensation purposes" (Territorial)
"It varies; it's political" (Other)
referral to the joint Screening Committee

Figure 11. Scope of Projects Screened

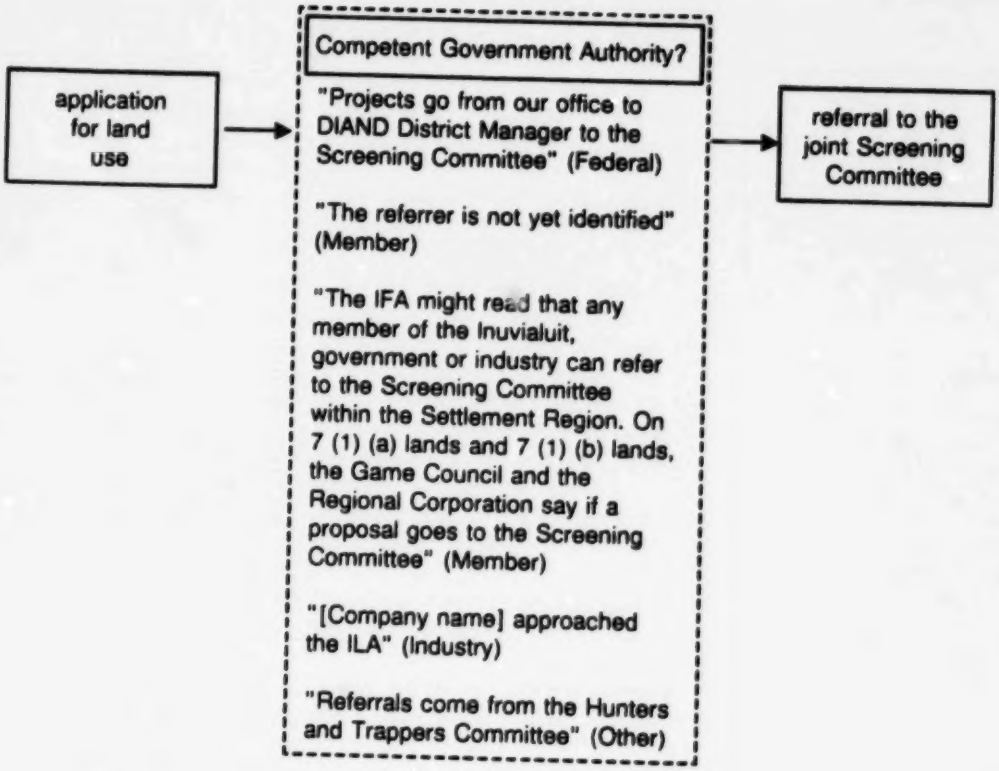

application for land use
Competent Government Authority?
"Projects go from our office to DIAND District Manager to the Screening Committee" (Federal)
"The referrer is not yet identified" (Member)
"The IFA might read that any member of the Inuvialuit, government or industry can refer to the Screening Committee within the Settlement Region. On 7 (1) (a) lands and 7 (1) (b) lands, the Game Council and the Regional Corporation say if a proposal goes to the Screening Committee" (Member)
"[Company name] approached the ILA" (Industry)
"Referrals come from the Hunters and Trappers Committee" (Other)
referral to the joint Screening Committee

Figure 12. Who Refers?

but have all been processed through the Department of Indian Affairs and Northern Development. Table 10 indicates the route which the referral has taken.

Table 10:
Referral Route to Screening Committee

Project Type	Referral Route
Extended flow test	referred by Gulf at the request of DIAND (Headquarters)
Access road	referred by DIAND (District Office)
Deep water port	referred by proponent request in application to DIAND. DIAND made formal referral.
Shoreline protection	Hunters and Trappers Committee requested DIAND to refer project. This request was supported by the Inuvialuit Regional Corporation.

In the case of the shoreline protection proposal, the DIAND official was first asked by the local Hunters and Trappers Committee and then prompted by the Inuvialuit Regional Corporation to refer the application to the Screening Committee. During the interview the government authority indicated that s/he was seeking clarification of the requirement to refer the project when the message from the Inuvialuit Regional Corporation was received. The official said that referral was not undertaken immediately because the nature of the concerns raised by the Hunters and Trappers Committee referred to the project as a whole rather than to just wildlife compensation issues. Because the proposal dealt with the offshore, s/he was uncertain whether it was her/his responsibility to refer the project to the Screening Committee. Responses from three separate federal government officials (Figure 13) show similar uncertainty and indicate the need to clarify the government role with respect to project referral.

Certain fundamental operational requirements have not yet been addressed by the Committee. For example, the Inuvialuit Environmental Impact Screening Committee has not established written procedures to accompany those provided in the Agreement; thus, there are no criteria by which to determine what kinds of projects are subject to, or exempt from, screening. Members of government departments such as the Environmental Protection Service, the Department of Fisheries and Oceans and different branches of DIAND stated in interview that they had requested clarification of the types of projects to be referred to the Committee.

Clarification through written guidelines would help to mitigate three potential problems in the referral process. First, the Screening Committee currently relies on the exercise of favourable discretion of government agencies to pass on project proposals for evaluation. This method may allow proposals of interest to the Inuvialuit to pass through the regulatory process without input from the Screening Committee. For example, one government official stated in interview that in the absence of guidelines, small-scale projects within the Settlement Region such as road coring have not been passed on to the Screening Committee. This exercise of discretion could be avoided through a clear message from the Committee to government officials regarding types of projects to be included for screening and those to be exempted.

Second, in the absence of clear guidelines, both the federal government and the Inuvialuit have sought legal interpretation to determine government responsibility to refer projects. Legal interpretation takes time and costs money. Such expense may be better made in other areas and may result in a rigid definition of referral procedures. Finally, clarification of referral procedures would raise the level of confidence on the part of government regulatory officials and the Inuvialuit. Currently, each case that is sent to the Screening Committee or retained by the regulatory authority sets a precedent for others which follow. The Inuvialuit want to ensure that due process is undertaken, while regulatory officials want to maintain a sense of autonomy and authority. Clear procedures would lend credibility to the process and would assist in defining a recognized role for the Committee and supportive attitude for its functions.

These shortcomings are recognized by the Committee members themselves. Intermittent meetings between members and government officials to determine priority issues has rated the need for written procedures with criteria for establishing the requirement to screen proposals as an immediate issue in May 1986. As of September of the same year, no criteria had been established. Interview respondents indicated a number of reasons for this seeming lack of progress. First, scheduling of meetings for all members of the Committee was considered difficult, particularly during the summer months. The long

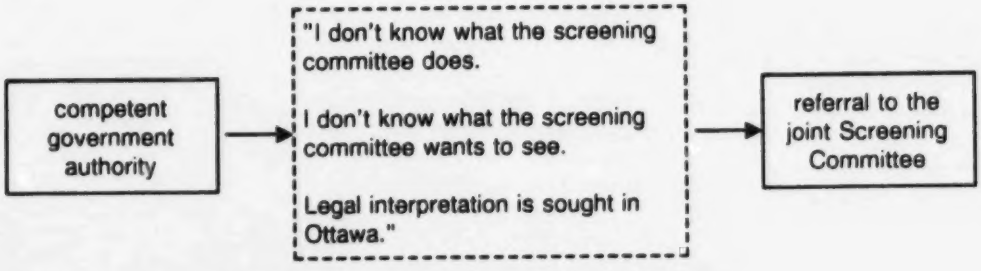

competent government authority
"I don't know what the screening committee does.
I don't know what the screening committee wants to see.
Legal interpretation is sought in Ottawa."
referral to the joint Screening Committee

Figure 13. Government Understanding of its New Role

distances required to bring people together and the varying schedules of members are not conducive to regular meetings. Second, the Agreement stated that a secretariat was to be created to provide administrative support to both the Screening Committee and the Review Board as well as other joint Government-Inuvialuit boards. The secretariat was not established until two years after the signing of the Agreement. Funding for the secretariat was approved by Treasury Board for the 1986/87 fiscal year and an executive director was hired in September 1987. In the absence of a secretariat at the outset of the implementation phase, officials in Ottawa coordinated some of the initial implementation tasks through its own implementation secretariat. As the secretariat was still new and without staff in September, completion of the priority tasks may take several months yet to complete.

Information Requirements

Section 11(12) of the Agreement provides a list of information requirements for proposals referred to the Screening Committee. This list is general in nature and provides both the proponent and the Screening Committee with flexibility to establish requirements for specific project proposals. One of the Gulf representatives stated that in its presentation to the Screening Committee of the extended flow test application, Gulf attempted to address each item on the list. Because the proposal was for an offshore project, COGLA was responsible for issuing the authority to proceed. The correspondence indicated that members of the Arctic Waters Advisory Committee and the Northern Environment Directorate made comments about the project which were forwarded to the members of the Screening Committee (see Correspondence References). The Screening Committee requested additional information from Gulf regarding the routing and timing of the project in contrast to concerns raised by government personnel with respect to contingency planning.

One representative from Gulf stated that the information requested from the Inuvialuit differed from that requested from government officials with respect to level of detail. While government concerns dealt more with policy issues, Inuvialuit concerns focused more on site-specific impacts. Thus, while the Screening Committee initially appears to duplicate government functions, its concerns may not have been addressed had the Committee not been involved.

This possibility that the Screening Committee addresses separate issues than the other technical committees is supported by a review of the documentation about this application. The Letter of Approval sent by the COGLA contained a condition that the Screening Committee considered important in its deliberations. Because of possible hazard to wildlife if the tanker were routed close to shore, the Screening Committee wanted the tanker to leave when the ice/water boundary was farthest from shore. As a result, Gulf was told to inform the Screening Committee if the tanker were expected to leave on its outward voyage prior to September 15, 1986 (Thomas to Mitton, 1986). This condition had not been mentioned in any government documentation previous to the approval.

The minimal information requirements legislated under the Agreement give the Committee flexibility in setting out its information needs as each project arises for screening. While this may seem like a weakness in the conventional environmental impact assessment framework, it may not be a matter of such importance for this Committee. The Committee is not a regulatory body and its chairperson stated that he did not want to see the Committee become involved in detailed review. Onerous information requirements at this time would be duplicated in a similar form if concern over impact suggests that further review is necessary. The current system provides flexibility to the Committee and allows recommendations to move through the system relatively quickly.

Participation Outside of the Screening Authority

Interagency Participation

While there is no requirement to do so, in projects where a government authority issues authorization for development, technical committees have forwarded their opinions to the Screening Committee automatically. This procedure has not been formalized. While information sharing may continue to be undertaken informally, it is possible that the joint secretariat may provide a role in obtaining necessary information for the Screening Committee as requested.

Public Participation

Public participation at the screening stage was not envisioned in the Final Agreement. In practice, the Screening Committee has structured its meetings to allow input from the public. The committee has established a two part meeting. The first part is open; here a proponent makes a presentation and members of the Committee and interested public(s) may ask questions. The second part is closed; here Committee members discuss the proposal, vote for the preferred outcome and make recommendations. There is no requirement to make the final recommendations public, however, during the course of the research, information about the proposals and outcomes of the meetings were discussed openly by all members.

The lack of guarantees for general public involvement is a factor which reduces the strength based on the legal requirement to comply with the Agreement. It is possible that the Committee, in time will adopt specific measures for dealing with public concerns when they develop their internal rules and procedures. These rules and procedures may be revised at the discretion of the Committee so do not guarantee public involvement. In this aspect, the Agreement provides no more access to the decision-making process than EARP procedures at the screening stage, but its practice has at least shown a commitment to making both the process and the outcome open.

Relationship Between Screening and Decision-making

The relationship of the screening process to decision-making is another area where clarification is essential. Section 11 (13) of the Agreement indicates that the Screening Committee is charged to determine if the proposed development could have a significant negative environmental impact and to indicate in writing its recommendation to the governmental authority competent to authorize the development. According to

Section 11 (12), the Committee shall choose to recommend one of the following three alternatives:

(a) the development will have no such significant negative impact and may proceed without environmental impact assessment and review under this Agreement;

(b) the development could have significant negative impact and is subject to assessment and review under this Agreement; or

(c) the development proposal has deficiencies of a nature that warrant a termination of its consideration and the submission of another project description.

It is significant that none of these alternatives allows the Screening Committee to recommend termination of the project itself. The Committee, therefore, can only accept a project as presented, refer it to the Review Board, or defer a decision until further information is provided. This section does not even consider an option of recommending terms and conditions which, if met, may allow a development to proceed without further assessment.

In practice, the vagueness of the wording has given rise to broad interpretation. One government official (Figure 14) suggested that once the Screening Committee had been consulted, DIAND was free to make a decision, even if the Committee requested more information. This interpretation was in direct contrast to that of the Chairperson of the Screening Committee, who stated that he believed that DIAND must wait until final recommendations of the Screening Committee and then the Review Board, if necessary, before it could proceed to issue a lease, permit, or licence.

So far, the practice has borne out the interpretation given by the Chairperson with respect to decision-making powers. None of the proposals have been granted approvals in the absence of acceptance by the Screening Committee. The case studies show a consistent effort on the part of the issuing authorities to give full consideration to the recommendations made by the Screening Committee and to ensure that the screening and review procedures are complete before final decisions are made. It is not clear if the reverse would also occur, i.e., that projects could be denied by the regulatory authority even if approved by the Screening Committee.

Even though the Screening Committee has authority only to make recommendations to the issuing authority, through its deliberations it may operationalize influence beyond that initially envisioned by the Agreement. For example, the dredging project was opposed by the majority of the members of the Committee. While the Committee could not, under the Agreement, reject the project outright, it was able to stall the project by requesting more information. This requirement made the option for shoreline protection, which was preferred by the proponent, impractical for the current fiscal year. In this case, the Screening Committee was able to exercise a *de facto* veto over the development.

Thus, the Inuvialuit Final Agreement has provided distinct rights which have been exercised by the Screening Committee to influence decisions regarding the pace and scale of development. Despite the uncertainty that surrounds the referral and decision-making procedures, the issuing authority has followed the recommendations of the joint Screening Committee.

SUMMARY OF FINDINGS

In both cases, the practice of environmental screening has shown divergence with the procedures outlined in the institutional provisions. Table 10 provides a summary of the findings in this chapter. While the Agreement provides legislative strength, its potential cannot be fully realized until many of the items in the discussion are clarified through a set of rules and procedures issued by the Screening Committee. Due to the lack of legislative base with the federal procedures, the institutional provisions for environmental screening under the Northern Affairs Program are not as strictly defined. The years of experience, however, have resulted in a better understanding of the allocation of responsibilities. Screening by federal officials has been loosely applied, particularly at the district level. In contrast, the Inuvialuit procedure has a clear basis in law. Efforts have been made by all participants to ensure that the Inuvialuit procedure is undertaken according to both the intent and the letter set out by the Agreement. While Inuvialuit jurisdiction on land is clearly recognized, its jurisdiction in the offshore region is less well understood. This uncertainty could result in by-passing the Screening Committee unless it provides a clear message of the projects to be screened in the offshore region.

Both screening processes have been restricted to physical projects and have not evaluated government policy. Both processes have considered socio-economic impacts as they result directly from biophysical impacts. In the case of the Inuvialuit, this mandate derives from its responsibility to assess wildlife impact in cases where compensation may be involved. The Inuvialuit process may encompass a broader scope because, under the Final Agreement, Crown corporations and regulatory agencies have been made subject to it. So far, these inclusions have not been tested.

The referral steps within DIAND are complex, but have been clarified with years of experience. In the absence of such experience and the absence of guidance from the Inuvialuit Final Agreement, the referral steps from the proponent to the Screening Committee remain poorly understood. As a result, determination of whether a project will be screened has been left to the discretion of the government authority first receiving an application. It is imperative that the Screening Committee provide guidelines for referral to reduce this discretionary practice and ensure that the intent of the Agreement is satisfied.

In practice, information requirements for both processes are general and left to the discretion of the appropriate screening authority. At this point there is no explicit provision for sharing information between the federal government and the Inuvialuit to reduce overlap in this regard for the proponent. Proposals received by the DIAND at the district level have been passed on by the district manager through his membership on the Committee. He was able to provide application information as necessary. This practice, however, can not be supported over the long term and only applies to one specific class of application. The Screening Committee should still provide

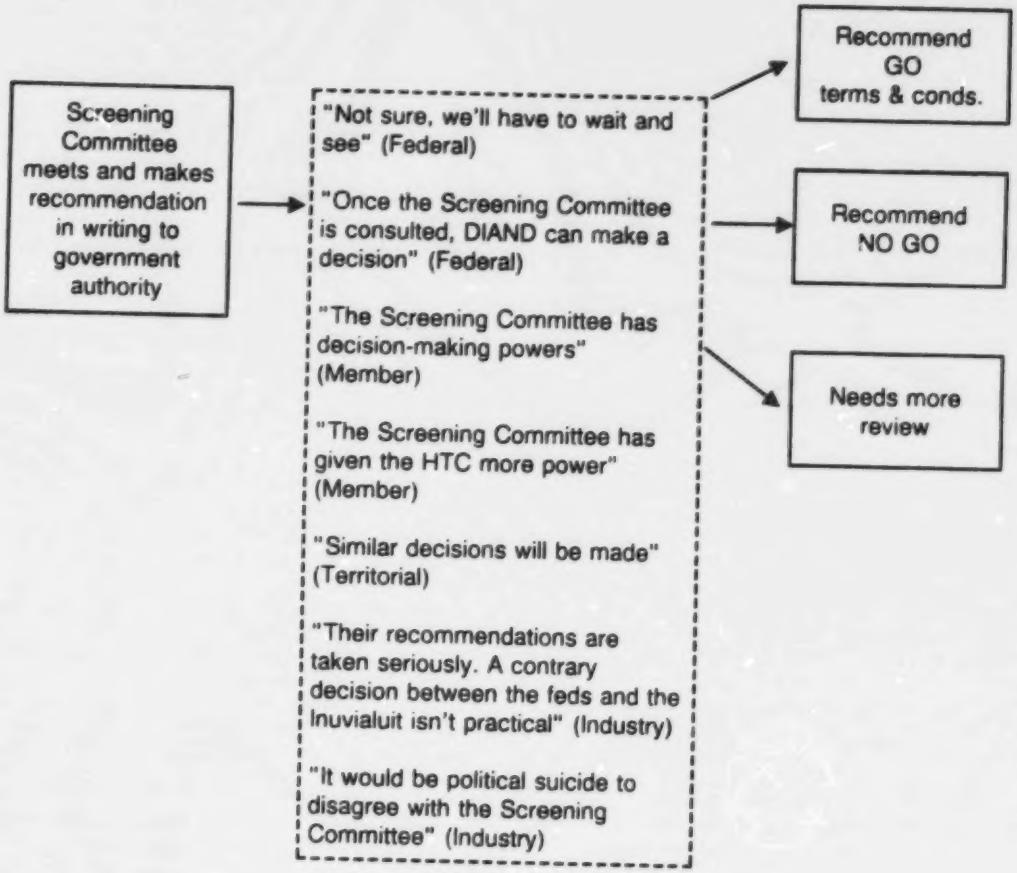

Screening Committee meets and makes recommendation in writing to government authority
"Not sure, we'll have to wait and see" (Federal)
"Once the Screening Committee is consulted, DIAND can make a decision" (Federal)
"The Screening Committee has decision-making powers" (Member)
"The Screening Committee has given the HTC more power" (Member)
"Similar decisions will be made" (Territorial)
"Their recommendations are taken seriously. A contrary decision between the feds and the Inuvialuit isn't practical" (Industry)
"It would be political suicide to disagree with the Screening Committee" (Industry)
Recommend GO terms & conds.
Recommend NO GO
Needs more review

Figure 14. Powers of Recommendation

guidance to the proponent over the level of technical detail and any presentation necessary by the proponent to the Committee. In addition, the Screening Committee should strive to establish information-sharing linkages with regulatory authorities to reduce the duplication of effort for the proponent.

Participation from outside the screening authority has yet to be established by the Screening Committee. While the federal practice places a high priority on interagency consultation, the Screening Committee has not actively sought advice from government technical committees or research branches. Public consultation has been provided, by both sets of procedures. The federal government generally restricts public consultation to providing information to interested parties and occasionally allowing for observation status for groups with special interests. The Screening Committee has provided a more open process by allowing members of the public to attend its meetings. This practice, however, remains discretionary. The environmental impact assessment framework would be further strengthened if the rules and procedures developed by the Committee incorporated allowances for public involvement.

Finally, the relationship between screening and decision-making remains complex. In the case of the federal government, the multiplicity of referrals and levels of departmental participation creates uncertainty of the locus of responsibility. From the Inuvialuit perspective, all of the recommendations of the Screening Committee have been applied by the government regulatory authority. For example, the application for an access road was refused on environmental grounds. The letter from the District Manager, DIAND stated local concern was one reason for refusal of the application. Although there is no provision in the Agreement to allow the Screening Committee to attach terms and conditions to an approval, in practice this was done in the approval for the extended flow test. The attachment of terms and conditions gives the committee greater influence and avoids delays which would be caused by referring such projects to the Review Board.

Table 11
Summary of the Practice of Environmental Screening

Evaluative Criteria	Northern Affairs Program Screening	Joint Inuvialuit-Government Screening
Understanding of Institutional Basis	—Clearly understood but loosely applied	—On land, clearly understood —Offshore, uncertain
Scope of Projects Referred	—Does not include government policy —Environmental and related social effects —Crown corporations and regulatory agencies expected to comply	—Does not include government policy —Environmental and related social effects —Crown corporations and regulatory agencies must comply
Referral	—Automatic when an application is received —Understood within DIAND —Not well explained	—Not well understood by any participants —Pathway to Screening Committee from proponent unclear
Information Requirements	—Not explicit, Screening Authority makes request	—Explicit in IFA but general, —Screening Committee makes request
Participation	—No interagency review at district level —High priority for interagency review at regional level —At headquarters, review undertaken with other agencies in Ottawa, less regional input —Information distributed by public if requested —Some interest groups given observation status —Less public involvement at Ottawa office —Decisions available on request	—Other agencies provide technical information —No explicit pathway for information flow —Public may attend screening meetings and ask questions —Recommendations made available on request
Screening and Decision-making	—Can approve a proposal at the district level —Can apply terms and conditions to project approval —Once at the region, can refer to higher level for final screening decision	—Recommends approval to government authority —Terms and conditions have been recommended for project approval —Has referred to public review —No recommendation has been denied

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

The previous chapters examined the changing framework for environmental assessment in light of a native claims agreement in the Western Arctic. In regions such as northern Canada, where native people maintain strong attachments to the land, direct involvement in the environmental impact screening and review process is an important expression of native rights that flows from the recognition of aboriginal title. This review demonstrat that direct involvement in environmental impact assessment is an important means by which native organizations can influence the course of development projects.

Until recently, native organizations have been systematically excluded from providing direct influence on government authorities who make decisions affecting land use and resource management in the Northwest Territories. In addition, legislation of general application has reduced the capacity of native organizations to make their own choices for land use, resource management, and livelihood preferences. The goals of native people, expressed by the Agreement as cultural preservation, participation in the northern economy, and protection of Arctic wildlife and environment, indicate coincidence with objectives of the general environmental movement, which calls for sustainable development of the North. While these goals are mutually compatible, native people are not willing to meet them using only the federal institutional framework.

The relatively short time that the Inuvialuit Final Agreement has been in existance and the relatively small number of projects subject to environmental screening suggest that firm recommendations for improvement are premature. The potential for implementation of the Agreement to provide the Inuvialuit with an influential role in environmental decision-making is strong. As the first Agreement of its kind in the Northwest Territories, its implementation is a model that other claimant groups negotiating with the federal government may implement or improve upon. The comments that follow are made in the context of the limited experience with the new framework for environmental screening.

The provisions of the Inuvialuit Final Agreement have modified the framework for environmental assessment to include a statutory provision for screening of project proposals by the Inuvialuit on environmental grounds. The Agreement places a legal obligation for projects that may have environmental consequences affecting the Inuvialuit Settlement Region to be screened by the joint Screening Committee until it is satisfied that environmental concerns will be addressed. A significant advantage of the new procedures over the federal EARP is that they function independently from both government and Inuvialuit agencies. The environmental screening and review process can operate as a watchdog organization, evaluating the environmental implications of development projects proposed by both government and industry throughout the Inuvialuit Settlement Region. These modifications serve to arrest the former trend, which confined screening procedures to the sponsoring government department and required only voluntary compliance with principles of environmental assessment. This new requirement strengthens the framework for environmental assessment by reducing the discretion for compliance and provides for more broadly based input at the regional level.

Although the Screening Committee is intended to be advisory only, it has demonstrated *de facto* decision-making powers in the case of the shoreline protection proposal. By requesting more information about the project, the Screening Committee delayed project implementation so that it was impractical to undertake the project as first conceived. While initially, this appears to be a strength of the Screening Committee, deliberate delay in providing recommendations for future projects could lead to a loss of credibility.

The timing of the screening procedures under the Inuvialuit Final Agreement operates with DIAND screening framework as a technical advisory committee would. The mandatory obligation to include the Screening Committee makes its participation significantly different from other committees. The four case examples have shown that the Screening Committee has had a strong influence in the decisions of the regulatory officials. The recency of its implementation makes it difficult to draw definitive conclusions. Given the uncertainties with implementation, the Screening Committee should give priority to developing rules and procedures to clarify outstanding issues as raised in this chapter. Chapter 5 summarizes the needs for clarification and discusses the regional implications of this new framework for environmental assessment.

An analysis of the implementation of the screening procedures under the Inuvialuit Final Agreement identifies a positive potential for influencing environmental decision-making across the Inuvialuit Settlement Region. Although the powers of the Screening Committee are advisory in nature, the case examples demonstrated that the recommendations of the Screening Committee have been adopted by the respective governing authorities. Concerns raised by the Committee have resulted in the attachment of new terms and conditions for project approval, refusal of a project, or postponement of project approval until the Committee is satisfied that their concerns have been addressed. These outcomes suggest that in practice, the Screening Committee has greater *de facto* powers than the status of an advisory committee would suggest.

The limited experience so far has demonstrated that even though there is a commitment on the part of participants to comply with the new provisions, there is also a great deal of uncertainty over the practical obligations of implementation. The Inuvialuit Final Agreement leaves most of the procedural issues to the exercise of discretion of either government officials or members of the Committee. For example, while the Inuvialuit procedures can potentially screen a wider range of projects than the federal procedures, there are no specific rules which ensure that these projects are referred on to the Screening Committee. The application of joint screening for

offshore projects is still largely untested and subject to differing interpretations. Information requirements placed on proponents are loose and the requirement of other government agencies to provide information is not clear. At this point, public participation has remained at the discretion of the Screening Committee.

A priority must be placed on clarifying, through written guidelines, the rules and procedures adopted by the Screening Committee which apply to proponents and government agencies. These guidelines should provide answers the the following questions:

1. To what kinds of development projects will screening apply?

   a. What project types will be automatically included or excluded from screening?

   b. What criteria may the competent government authority apply to determine whether or not a project will be referred to the Screening Committee, particularly in the offshore region?

2. Who is responsible for making a referral to the Screening Committee?

3. What information is required to undertake screening other than that listed in the Inuvialuit Final Agreement?

   a. What is the level of technical information required from the proponent?

   b. What particular areas of concern should the proponent address in providing information?

   c. How is information sought from other government agencies?

4. Will the public be allowed to participate at the screening stage?

   a. What provisions will be made for access to information?

   b. What provisions will be made for incorporating public opinion?

Procedural clarification will help to reduce functional overlap between the Screening Committee and other advisory committees which report to DIAND. Other native groups may want to incorporate these items in their Agreements themselves rather than through procedural guidelines after the Agreements have been signed.

A significant omission in the Final Agreement is that, like the Regional Offices of DIAND, the Screening Committee has not been given the authority to deny a project on environmental grounds. Further, the Agreement does not provide for the Screening Committee to recommend terms and conditions to be applied to project approval. These limitations could result in significant delay if the Screening Committee chooses to refer a project to the Review Board rather than require a new application to be submitted or to attach terms and conditions.

As exemplified by the extended flow test application, terms and conditions have been recommended by the Screening Committee and accepted by the competent government authority. This exercise, however, relied on the favourable discretion of government authorities. To ensure a firmer commitment to its deliberations, the Screening Committee may consider requesting documentation of the decisions made by government authorities. In particular, if the recommendations of the Screening Committee are not adopted, the Committee may consider requesting an explanation in writing of the reasons for change. This item may also be one that other native claims negotiations will want to address before their Agreements are finalized.

The performance of the Screening Committee cannot be separated from the broader context for implementation of the Final Agreement. Four broad areas of concern were raised during interviews in this regard. These four areas are:

- identification with the three overall goals of the Agreement — cultural preservation, equal participation in the northern economy and protection of Arctic wildlife and environment;
- supportive attitudes;
- provision of logistical support for implementation; and
- linkages with future comprehensive agreements.

It is important for successful implementation that all participants are aware of and have an appreciation for the three overriding goals of the Agreement. The goals listed above are open to broad interpretation and may be viewed as conflicting in nature. Discussions with respondents, however, reveal that the goals need not be mutually exclusive unless they are considered in absolute terms. The goals could be promoted simultaneously as long as trade-offs between absolute values were considered a viable means of promotion. For example, the goal of Inuvialuit participation in a northern economy involving non-renewable resource development was not considered to conflict with the goal of environmental preservation, unless preservation was interpreted as meaning absolutely no change to the physical environment. Those interviewed emphasized that components of these goals should be isolated to determine compatibility. For example, native people may be able to work in the non-renewable resource industry and maintain their cultural identity by separating the community from the work camp and by modifying the industry work strategy to accommodate hunting schedules.

When asked if compliance with EARP would have sufficed to meet the three goals, industry representatives replied that their commitment to sound development practices in the North, rather than environmental assessment procedures *per se* has demonstrated a commitment to meeting the three goals stipulated in the Agreement. In contrast to the unified voice of industry, government representatives were divided over whether EARP would have met the three goals in the absence of the Final Agreement. Some believed that compliance with EARP would have met the goals, while others believed that the federal government concentrated on the physical environmental matters to the exclusion of cultural, social, and economic concerns that were of great importance to the Inuvialuit.

These last considerations were reiterated by Inuvialuit, who stated that they are concerned about economic and cultural

considerations that will affect them immediately and directly. Concerns such as site selection and contracting practices have been raised at screening meetings. Gains and losses have been weighed by the Inuvialuit members in terms of their site-specific effects, rather than their policy implications. The Inuvialuit also stated their concern about government authorities who assume that they understand native issues. Inuvialuit expressed the desire to interpret the goals for themselves, according to their own priorities.

These differences of opinion suggest that emphasis should be placed on providing moral and logistical support for Inuvialuit expression rather than focusing attention on specific definition of the goals. Moral support from government and industry will be derived from an articulated confidence in the ability of the Inuvialuit to carry out their new functions.

In this regard, the interviews revealed that in general industry supports the Agreement and welcomes the opportunity to deal directly with native land-title holders. Industry representatives stated that the Inuvialuit are progressive people who have great pride in their land and who understand its configurations. One industry representative confided that the Inuvialuit had saved the company thousands of dollars by suggesting an improved site location for a proposal which would simultaneously be less disruptive to wildlife than the original site.

This attitude was in contrast to the concern voiced by all interest groups over the ability of the Screening Committee to make technical recommendations. For one respondent, this concern was translated into bitterness that the Committee was making decisions on matters that were felt to be beyond its technical expertise. This respondent believed that the Chairperson has a responsibility to guide the Committee and to educate its members so that "responsible" recommendations can be made.

It is important to remember that the Screening Committee is a joint government-Inuvialuit body. The Committee does not make decisions in isolation from other government agencies. Other committees also have input into government procedures at the initial assessment stage. Government technical committees such as the Arctic Waters Advisory Committee provide information to the Committee as well as to the responsible government authority. Further communication networks may be established as the secretariat becomes involved in providing support services and as experience with screening proposals increases.

Notwithstanding, the general concern for demonstrating ability to make decisions is shared among all participants, including Inuvialuit members. It is a constraint that will also be faced by other native organizations once their respective Agreements are implemented. The historical review in Chapter 1 demonstrated that native people have not been actively involved in decision-making institutions and lack cultural familiarity with the large and complex structures which the Agreement establishes. The number of native people who have technical expertise is small and these individuals have been stretched across numerous boards and committees. Education and training are needed to ensure that implementation is successfully undertaken. At the time this study was undertaken, many senior positions within the Inuvialuit organizations were held by non-native people from the South. True representation will require a commitment to training programs to allow Inuvialuit to take over these positions.

It may take several years before the environmental impact screening and review process is fully operational. Many of the uncertainties surrounding implementation will be resolved as participants gain familiarity with the new procedures. Integration among the provisions for environmental assessment, other management boards under the Agreement, and government jurisdiction may only be fully evaluated after more time has elapsed. The Northern Affairs Program, for example, has not replaced any of its functions in light of the new Agreement. While the draft Guide issued by the Program stated its commitment to reducing overlap and duplication with other review processes through co-operation and joint efforts, the Department still undertakes its own procedures and relies on the same technical committees.

Concern about the potential for overlap was expressed by all participants of this study who were involved in environmental impact assessment. During the interviews, industry representatives expressed reticence to become involved in a process which duplicates the regulatory functions and requirements already established by the federal government. While the requirements of the Screening Committee do not appear to be onerous as yet, the possibility of review by government panel and the Review Board may involve duplication of effort, increased cost, and significant delay. The potential for overlap points to a need to develop criteria by which projects will be referred from the Screening Committee either to the Review Board, or to government authority for public review.

The implications for overlap become more apparent if the provisions are examined in the context of other native claims negotiations in the region. The Inuvialuit Final Agreement represents the first of four native claims agreements to be established for the Northwest Territories. Each agreement will likely establish new procedures for environmental screening and review on a regional basis. In addition, the territorial government also claims jurisdiction to responsibilities once held, without question, by the federal government. Projects that span more than one geographic region may pose particular problems of duplication. Where responsibilities are, possibly, devolved to the territorial government, the potential for duplication and/or uncertainty becomes even greater.

There is an obvious need to achieve a reasonable amount of similarity in the environmental impact assessment processes prescribed for each region and to ensure that their functions are co-ordinated. In the context of devolution, it may be necessary to re-define the role of the federal government in impact assessment in the North, and to limit the scope of its powers to that which it holds in the provinces. In the transition period, the federal government may work towards providing its expertise and logistical support to new regional authorities that may be created, and share its leadership role with the territorial government.

These uncertainties surrounding implementation of the provisions are important for other native organizations that are still negotiating the terms of their claims agreements with the federal government. Modern claims agreements are intended to address the legal and moral obligations of the Crown to

provide for native self-reliance. Part of the fulfilment of this obligation is to ensure that native people have direct participation in decisions that affect their lifeways and livelihoods directly. The signing of an Agreement only marks the beginning of an on-going government commitment to ensure that these structures continue to be viable and influential. Forthcoming Agreements should include long-range plans for implementation which include provisions for training and education of native people as well as for non-native government officials to assist in carrying out new responsibilities.

This scenario suggests that provisions made under native claims agreements are only part of a reorientation towards regionalization of political power in the Northwest Territories. Reorientation of government policy must overcome bureaucratic inertia to change, and acknowledge the possibility of local participation in land use decision-making. It will also require that problems associated with regional development be addressed. For example, a new northern power base will require training for the local population and experience in working with new complex structures that the new arrangements will bring. In addition, the development of strong communication links must incorporate flexibility in order to deal with difficulty of access to remote areas and differences in cultural and language background. These constraints will place pressures on the development of strong regional institutions that are not encountered to the same degree in southern Canada. The best intentions of the devolution process may be subverted by poor integration with existing government arrangements, poor financial and logistical support for new arrangements, and poor linkages among new institutions.

Demands placed on the land base reflect the presence of several jurisdictions with composite sets of values. Management options reflect desires for multiple uses ranging from wilderness preserves and renewable resource harvesting to community development and extractive activities. To prevent factionalization, it is important that new regional and existing federal institutions work to develop an overall policy framework for environmental management that can account for this plurality. Within such a framework, more precisely defined arrangements can be made to promote sustainable development and safeguard the cultural, social, and economic well being of northern residents. The movement toward providing more regional input in land and resource use decisions, of which the environmental procedures of the Inuvialuit Final Agreement are a part, indicates that the federal government is making positive, though cautious, changes in this direction. Recognition of the rights of native people to become direct participants in the decision-making process was the first step to ensuring that they can take advantage of the multiple opportunities and benefits offered by living in the North.

APPENDIX A

NAMES AND POSITIONS OF INTERVIEWEES

Name	Title
Floyd Adlem•	Acting Regional Manager, Land Resources Division Northern Affairs Program, DIAND (Yellowknife)
John Banksland*	Chief, Aklavik Community Corporation (Aklavik)
Peter Bannon*	Supervisor, Arctic Waters, Water Resources Division Northern Affairs Program, DIAND (Yellowknife)
John Batteke•	Manager, Socio-economic Affairs Esso Resources Canada (Calgary)
François Bregha*	Director, Northern Affairs Corporate Planning Group, DIAND (Ottawa)
Douglas Bruchet**	Manager, Environment and Socio-economic Development Canadian Petroleum Association (Calgary)
Rudy Cockney•	District Manager and Member of Screening Committee Northern Affairs Program, DIAND (Inuvik)
Ewan Cotterill•	Private Consultant and Chairperson of Screening Committee (Yellowknife)
Doug Desjardins•	Administrative Officer Northwest Territories Land Use Planning Commission (Yellowknife)
John Donihee*	Chief, Environmental Planning and Assessment Department of Renewable Resources, GNWT (Yellowknife)
Frank Elanik*	Member of Screening Committee (Aklavik)
Maurice Fisher**	Socio-economic Adviser Esso Resources Canada (Calgary)
Bernard Funston*	Constitutional Counsel, Justice and Public Services, GNWT (Yellowknife)
Robert Greyell*	Manager, Operations Federal Environmental Assessment Review Office (Ottawa)
Richard Hill*	Private Consultant (Inuvik)
Richard Hoos**	Director, Environmental Affairs Dome Petroleum (Calgary)
John Hunt**	Environmental and Social Affairs Petro-Canada (Calgary)
Carey Johanneson•	Co-ordinator of Socio-economic Planning Gulf Canada Resources (Calgary)
Dave Jones*	Planning Officer, Land Use Planning Renewable Resources, GNWT (Yellowknife)

Name	Title
Gay Kennedy•	Project Assessment Co-ordinator Energy, Mines and Resources Secretariat, GNWT (Yellowknife)
Edgar Ladouceur•	Regional Manager, Environment and Conservation, DIAND (Yellowknife)
Robert Larson•	Planning Co-ordinator, Environmental Assessment and Planning Renewable Resources, GNWT (Yellowknife)
Jim Lawrence*	Manager, Field Services, Land Section Gulf Canada Resources (Calgary)
Ron Livingston**	Planning Co-ordinator, Environmental Assessment and Planning Renewable Resources, GNWT (Yellowknife)
Jim Livingstone*	Manager, Community Affairs Gulf Canada Resources (Inuvik)
Fred McFarland*	Acting Chief, Terrestrial Environment Division Natural Resources and Economic Development, DIAND (Ottawa)
Angus McKay*	Aboriginal Rights Secretariat, GNWT (Yellowknife)
Camille Mageau*	Oceanographer, Offshore Environment Division Northern Environment Protection Branch, DIAND (Ottawa)
Lorne Matthews•	Regional Planning Adviser Energy, Mines and Resources Secretariat, GNWT (Yellowknife)
Moheb Michael*	Planning Engineer, Community Works and Capital Planning Municipal and Community Affairs, GNWT (Yellowknife)
Hal Mills*	Director, Northwest Territories Land Use Planning Commission (Yellowknife)
Thomas Nesbitt*	Land Use Planning Co-ordinator Committee for Original Peoples' Entitlement (Yellowknife)
Dan O'Rourke*	Senior Analyst, Policy Analysis and Co-ordination COGLA (Yellowknife)
Glen Packman*	Manager, Environmental Protection Environmental Protection Service (Yellowknife)
Jill Pangman*	Regional Planning Analyst, Land Use Planning Renewable Resources, GNWT (Inuvik)
Ed Pessah•	Manager, Environmental Science Environmental and Socio-economic Services Dome Petroleum (Calgary)
Frank Pokiak*	President, Hunters and Trappers Committee and Member of the Screening Committee (Tuktoyaktuk)
Doug Robertson*	Director, Process Evaluation and Co-ordination Branch Federal Environmental Assessment Review Office (Ottawa)
Vance Ruzicka*	Municipal Engineer, Local Government, GNWT (Inuvik)
Susan Scotti*	Co-ordinator, Western Arctic (Inuvialuit) Secretariat DIAND (Ottawa)

Name	Title
Norm Snow*	Executive Director, Co-ordinating Committee, Inuvialuit Region, Inuvialuit Regional Corporation
Vince Steen*	Development Co-ordinator, Hamlet of Tuktoyaktuk (Tuktoyaktuk)
Gordon Stenhouse*	Regional Biologist (possibly new Member of the Screening Committee) Renewable Resources, GNWT (Inuvik)
Doug Stewart•	Land Claims Co-ordinator, Renewable Resources, GNWT (Yellowknife)
Maurice Thomas*	Manager, Northern Region, COGLA (Yellowknife)
Peter Usher*	Private Consultant (Ottawa)
Dean Walker•	Acting Land Administrator Inuvialuit Lands Administration (Tuktoyaktuk)
Brian Wong*	District Biologist, Western Region

• These people were interviewed in person, using a semi-structured interview format.

* These people were interviewed in person, using an unstructured interview format. In some cases (ex: Brian Wong), the contacts were necessary to clarify specific procedures.

** These people were contacted by telephone and responded to an unstructured interview format.

APPENDIX B

INTERVIEW SCHEDULE

The following questions were the basis for interviews. The outline below represents a generic list of questions which were used with most of the people interviewed. Each particular interest group was asked additional questions which related to its area of specialization. There was an effort to make questioning consistent throughout the course of the interviews. Following the logic of the respondent's train of thought and her/his expertise required that some questions become integrated or discussed more intensively than the others.

Name .....
Organization .....
Position .....
Date .....
Time Begin .....
Place .....

1. Speaking as a representative of ....., what long terms plans do you see for resource development in the Beaufort Region?

   What specific priorities are important now to meet these long term goals?

   Explain the role of your department in environmental assessment of resource development projects.

2. How has increasing regulation of the industry affected project development?

3. In your opinion, what are the goals of environmental impact assessment?

4. When EARP was first introduced, what were your expectations of what was required of your (department)?

5. How have these expectations changed over time?

6. If you were able to change the environmental assessment process to reflect your values more closely, what aspects of the process would you change?

   Why these aspects?

7. Turning to a specific example, what overall impressions did you have about the most recent EARP in the Northwest Territories?

   What positive effects can you identify?

   What negative effects can you identify?

8. The Inuvialuit Final Agreement stipulated three broad goals:

   g1. preservation of cultural identity
   g2. participation in the northern economy
   g3. preservation of the Arctic environment

9. In a general way, tell me how Inuvialuit involvement in environmental assessment is working towards meeting these three goals?

   first, goal 1
   goal 2
   goal 3

10. Is it possible to allow industrial development and preservation of the environment at the same time?

how

11. Is it possible to allow industrial development and preservation of cultural identity at the same time?

how

12. Would industry compliance with the federal EARP have met the aim of these 3 goals without the Inuvialuit screening and review procedures?

13. Explain the role of the Inuvialuit Lands Administration.

14. How is authority divided between the federal government and the Inuvialuit Lands Administration.

15. Do you see any aspect of the new regulations of the ILA as an important break from those that the federal government previously stipulated?

16. What efforts have there been to co-ordinate planning and assessment efforts of new Inuvialuit bodies recently established with the responsibilities of your department?

17. How are projects referred to the screening committee?

ILA
industry
government
other

18. Describe the scope of projects which get referred to the committee.

are there geographical limits
are development concepts subject
are policies and projects subject
what exemptions are made

19. Are there guidelines which have been provided for industry to follow when making a proposal?

20. Is there additional information that the Inuvialuit screening committee requires that the federal government does not require?

21. Can the screening committee order that studies be done by industry before permission is granted?

22. Is the decision of the committee final?

23. In what type of situation might you envision a joint screening or review with the federal government?

24. If I were a company interested in dredging in the nearshore for a landfill on the Tuktoyaktuk Peninsula, could you provide a list of approvals which you would have to obtain to undertake this work?

outline the steps I would have to go through to be permitted to dredge.

25. Name the projects which you have been involved in.

documentation available?

Starting with....., describe the nature of this project to me.

What steps did the company take to obtain a permit to .....?

What consultation was undertaken with the Inuvialuit Screening Committee?

What questions did they raise about the proposal?

What benefits (losses)will the Inuvialuit gain from allowing the project to (not) go ahead?

26. What form does the approval take?

27. How is the approval(rejection) communicated?

28. What are the advantages of adding the Inuvialuit procedure to the ones already established?

Inuvialuit
federal government
territorial government
industry
public

29. What are the disadvantages of adding the Inuvialuit procedure to the ones already established?

Inuvialuit
federal government
territorial government
industry
public

30. What kinds of improvements in the Inuvialuit process do you think are necessary?

31. What kinds of improvements are necessary in how the Inuvialuit process fits into the larger assessment framework?

how might these be achieved?

32. How doe you see the future for Inuvialuit involvement in environmental assessment?

explain.

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